UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re: SRC Holding Corporation, f/k/a Miller & Schroeder, Inc. and its subsidiaries, Debtors.	Chapter 7 Case BKY Case Nos. 02-40284 to 02-40286 Jointly Administered
McIntosh County Bank, First State Bank Of Bigfork, Security First Bank Of North Dakota, Campbell County Bank, Inc., Security State Bank, Choice Financial Group, United Community Bank Of North Dakota, Community National Bank, Lake Country State Bank, Bank Of Luxemburg, Peoples State Bank Of Madison Lake, New Auburn Investment, Inc., Oregon Community Bank & Trust, State Bank Of Park Rapids, Farmers State Bank, Citizens State Bank Of Roseau, First Independent Bank, First National Bank Of The North, Security State Bank Of Sebeka, Northstate, LLC, First American Bank & Trust, First Federal Savings Bank Of The Midwest, North Country Bank & Trust, Dacotah Bank - Valley City, First National Bank & Trust Co. Of Williston, Ultima Bank Minnesota, Security Bank Usa, The Ramsey National Bank And Trust Co. Of Devils Lake, Mcville State Bank, Page State Bank, First National Bank Of The North, Brian F. Leonard, Trustee, and Marshall Investments Corporation, a Delaware Corporation Plaintiffs, v. Dorsey & Whitney LLP, a Minnesota Limited Liability Partnership, Defendant.	ADV Case No. _____ **ADVERSARY COMPLAINT**

PLAINTIFFS for their Complaint against the DEFENDANT state and allege as follows:

I.
THE PARTIES

1. McIntosh County Bank is a North Dakota banking corporation having its principal place of business at 204 Main Street, Ashley, ND 58413.

2. First State Bank of Bigfork is a Minnesota banking corporation having its principal place of business at 400 Main Avenue, Bigfork, MN 56628.

3. Security First Bank of North Dakota is a North Dakota banking corporation having its principal place of business at 100 West Main, Center, ND, 58530.

4. Campbell County Bank, Inc. is a South Dakota banking corporation having its principal place of business at 110 Main, Herreid, SD 57632.

5. Security State Bank is a Wisconsin banking corporation having its principal place of business at Hwy 2, Iron River, WI 54847.

6. Choice Financial Group is a North Dakota banking corporation having its principal place of business at 645 Hill Avenue, Grafton, ND 58237.

7. United Community Bank of North Dakota is a North Dakota banking corporation having its principal place of business at 105 Central Avenue South, Leeds, ND 58346.

8. Community National Bank is a Minnesota banking corporation having its principal place of business at 7641 Lake Drive, Lino Lakes, MN 55014

9. Lake Country State Bank is a Minnesota banking corporation having its principal place of business at 706 South Hwy 71, Long Prairie, MN 56347.

10. Bank of Luxemburg is a Wisconsin banking corporation having its principal place of business at 630 Main Street, Luxemburg, WI 54217.

11. People's State Bank of Madison Lake is a Minnesota banking corporation having its principal place of business at 500 Main Street, Madison Lake, MN 56063.

12. New Auburn Investment, Inc. is a Wisconsin corporation having its principal place of business at 112 Main Street, New Auburn, WI 54757.

13. Oregon Community Bank and Trust is a Wisconsin banking corporation having its principal place of business at 733 North Main Street, Oregon, WI 53575.

14. State Bank of Park Rapids is a Minnesota banking corporation having its principal place of business at 200 East First Street, Park Rapids, MN 56470.

15. Farmers State Bank is a Kansas banking corporation having its principal place of business at 110 West State Street, Phillipsburg, KS 67661.

16. Citizens State Bank of Roseau is a Minnesota banking corporation having its principal place of business at 118 Main Avenue South, Roseau, MN 56751.

17. First Independent Bank is a Minnesota banking corporation having its principal place of business at 300 Front Street, Russell, MN 56169.

18. First National Bank of the North is a Minnesota banking corporation having its principal place of business at 510 Main Street, Sandstone, MN 55072.

19. Security State Bank of Sebeka is a Minnesota banking corporation having its principal place of business at Main Street, Sebeka, MN 56477

20. Northstate, LLC is a Minnesota limited liability corporation having its principal place of business at 1305 Vierling Drive, Shakopee, MN 55379.

21. First American Bank & Trust is a South Dakota banking corporation having its principal place of business at 133 South Main Avenue, Sioux Falls, SD 57101.

22. First Federal Bank of the Midwest is a Iowa banking corporation having its principal place of business at Fifth at Erie, Storm Lake, SD 50588.

23. North Country Bank & Trust is a Michigan banking corporation having its principal place of business at 130 South Cedar Street, Manistique, MI 49854.

24. Dacotah Bank – Valley City is a banking corporation having its principal place of business at 240 NW Third, Valley City, ND 58072.

25. First National Bank & Trust Co. of Williston, is a North Dakota banking corporation having its principal place of business at 22 East Fourth, Williston, ND 58802.

26. Ultima Bank Minnesota is a Minnesota banking corporation having its principal place of business at 603 Hilligoss Blvd., Fosston, MN 56542.

27. Security Bank USA is a Minnesota banking corporation having its principal place of business at 1025 Paul Bunyan Drive NW, Bemidji, MN 56619.

28. Ramsey National Bank and Trust of Devils Lake is a North Dakota banking corporation having its principal place of business at 300 Fourth Street, Devils Lake, ND 58301.

29. McVill State Bank is a North Dakota banking corporation having its principal place of business at 201 South Main, McVille, ND 58254.

30. Page State Bank is a North Dakota banking corporation having its principal place of business at Main Street, Page, ND 58064.

31. First National Bank of the North is a Minnesota banking corporation having its principal place of business at 510 Main Street, Sandstone, MN 55072.

32. Defendant Dorsey & Whitney LLP is a Limited Liability Partnership formed under the laws of the State of Minnesota ("Dorsey & Whitney"), having its principal place of business at 50 South Sixth Street, Suite 1500, Minneapolis, Minnesota 55402.

33. Plaintiff Brian F. Leonard, Trustee, is the duly appointed, qualified, and acting Chapter 7 Trustee of the above referenced Chapter 7 bankruptcy estates. This adversary proceeding is filed in the Trustee's capacity as Chapter 7 trustee of each of the jointly-administered Debtor bankruptcy estates (the "Debtors").

34. Marshall Investments Corporation is a corporation incorporated under the laws of the State of Delaware ("Marshall Investments"), having its principal place of business at 150 South Fifth Street, Suite 3000, Minneapolis, Minnesota 55402.

II.
JURISDICTION

35. This Complaint is filed under Bankruptcy Rule 7001. The Court has jurisdiction over all issues arising hereunder pursuant to 28 U.S.C. § 1334 and § 157, Bankruptcy Rule 7001 and Local Rule 1070-1. This is a core proceeding under 28 U.S.C. §157.

III.
VENUE

36. Venue is proper before this Court pursuant to 28 U.S.C. § 1408 and § 1409.

IV.
ALLEGATIONS COMMON TO ALL CLAIMS

Management And Development Agreement To Finance Construction Of Akwesasne Mohawk Casino

37. Effective December 27, 1997, President R.C. – St. Regis Management Company ("President") entered into the Fourth Amended and Restated Management Agreement ("Management Agreement"), with the St. Regis Mohawk Tribe ("Tribe"), pursuant to which, among other things, President agreed to finance, construct and manage the Akwesasne Mohawk Casino in Hogansburg, New York ("Akwesasne Casino") on the Tribe's reservation land near Canada. The Casino is a gaming enterprise of the Tribe. A copy of the Management Agreement is attached hereto as **Exhibit A**.

38. On or about January 14, 1998, the Tribe executed a Promissory Note ("Note") in favor of President promising to repay the sum of $20 million or the aggregate unpaid principal amount of all advances for Development Expenses made by President to the Tribe pursuant to the Management Agreement and to repay the principal amount thereof and interest on the unpaid principal balance pursuant to the terms of the Management Agreement. The purpose of the Note was to evidence the advance of

Development Expenses made by President to the Tribe under the Management Agreement.

Miller & Schroeder Loans To President To Finance Construction Of Akwesasne Mohawk Casino

39. Miller & Schroeder Investments Corporation, a Minnesota corporation, now known as SRC Investments Corporation ("Miller & Schroeder"), made two loans on February 24, 1999 to President to assist President in financing the construction of and the acquisition of equipment, furniture and fixtures for the Akwesasne Casino and improvements to and the acquisition of equipment, furniture and fixtures for the St. Regis Mohawk Bingo Palace.

40. The first loan was a Senior Lien Construction Loan in the amount of $8,624,000 ("St. Regis I").

41. The Senior Lien Construction Loan was secured by a pledge of the sums to be paid by the Tribe to President pursuant to the terms and conditions of the Management Agreement.

42. The second loan was a Senior Lien Furniture, Fixtures & Equipment Loan in the amount of $3,492,000 ("St. Regis II").

43. The Senior Equipment Loan was also secured by a pledge of the sums to be paid by the Tribe to President pursuant to the terms and conditions of the Management Agreement.

44. St. Regis I Senior Lien Construction Loan and St. Regis II Senior Equipment Loan are hereinafter referred to as the "Loans".

45. Miller & Schroeder sold the entire beneficial interest in the Loans to President to thirty two state and nationally chartered financial institutions, thirty one of which are Plaintiffs in this action and hereinafter referred to as " Bank Participants ".

46. Miller & Schroeder also entered into Participation Agreements with the Bank Participant purchasers of the interests in the Loans to President.

Retention Of Dorsey & Whitney By Miller & Schroeder To Represent Miller & Schroeder And Its Bank Participants Relative To The Structuring And Documentation Of The Loans To President

47. In early 1999, Miller & Schroeder retained Dorsey & Whitney to represent the interests of Miller & Schroeder and the Bank Participants that would be purchasing the entire beneficial interest in the Loans to President in connection with the structuring, documentation and closing of the Loans.

48. Dorsey & Whitney, on behalf of Miller & Schroeder and the Bank Participants, provided legal services including:

> Legal research, review of documents, including term sheet, proposal, project materials, due diligence checklist and related materials, New York State Banking law, New York State Racing and Wagering statutory and regulatory provisions and regulations of the National Indian Gaming Commission, tribal documents, compact, management and other contracts, partnership documents, sale agreements, memorandum regarding doing business, UCC search, Phase I environmental audit, survey, market study revisions and land issues, title materials and related documents; drafting and revising of loan documents, including Notice and Acknowledgement of Pledge, Promissory Notes, Loan Agreements, Escrow Agreements, lists of closing documents, and various closing certificates and opinions; conferences and correspondence with client and others; attendance at meetings; pre-closing and closing; and review of transcript of proceedings.

(hereinafter collectively referred to as "Legal Services").

49. Miller & Schroeder and the Bank Participants fully expected that Dorsey & Whitney would (i) competently advise as to all necessary approvals required from the Bureau of Indian Affairs, National Indian Gaming Commission, State of New York and any other regulatory authority with jurisdiction related to the Loans to President to ensure that all of the Loan Documentation was valid and enforceable, (ii) competently advise as to all and any New York law issues related to the Loans to President to ensure that all of the Loan Documentation was valid and enforceable, (iii) take all necessary steps to structure and document the Loans to President to ensure that all of the interests of Miller & Schroeder and the Bank Participants were fully protected and secured and (iv) diligently and forthrightly advise Miller & Schroeder and the Bank Participants of any conflicts of interest which would preclude or impair Dorsey & Whitney's ability to fully and competently represent Miller & Schroeder and the Bank Participants as to any and all issues related to the Loans to President.

50. From the outset of Dorsey & Whitney's engagement one aspect of the transaction that was critically important was to structure the transaction so that all necessary steps be taken to ensure the validity and enforceability of the Notice and Acknowledgment of Pledge Agreement dated February 12, 1999 among the Tribe, President and Miller & Schroeder which created a direct payment obligation of the Tribe to Miller & Schroeder and waived the Tribe's sovereign immunity and certain defenses relative to the repayment of the Development Expenses as defined pursuant to the Management Agreement.

Sequence Of Loan Documents And Submission To The National Indian Gaming Commission

51. By letter agreement dated November 16, 1998, Miller & Schroeder initially agreed to provide a $10,000,000 Senior Construction and Term Loan (the "Preliminary Loan") to President ostensibly to fund the remaining costs associated with the completion of construction of a 76,800 square foot casino facility on the Reservation of the St. Regis Mohawk Tribe (the "Tribe").

52. Prior to the Letter Agreement, President had entered into the Management Agreement with the Tribe to develop and operate the Akwesasne Casino to be developed and located in Hogensberg, New York.

53. Miller & Schroeder did in fact make the two Loans hereinbefore referenced on February 24, 1999 to President to assist President in financing the construction of and the acquisition of equipment, furniture and fixtures for the Akwesasne Casino and improvements to and the acquisition of equipment, furniture and fixtures for the St. Regis Mohawk Bingo Palace.

54. As security for the performance of all payment and other obligations under the Loans, President pledged and granted a security interest to Miller & Schroeder pursuant to that certain Notice and Acknowledgment of Pledge Agreement dated February 12, 1999 among the Tribe, President and Miller & Schroeder ("Pledge Agreement") in the management fees and repayment by the Tribe of the development expenses owed by the Tribe to President under the Management Agreement (all of these management fees and development expenses being collectively referred to herein as the

"Pledged Revenues"). A copy of the Notice and Acknowledgment of Pledge Agreement is attached hereto as **Exhibit B**.

55. The Pledge Agreement creates a direct payment obligation of the Tribe as to the Pledged Revenues to Marshall Investments as agent for Miller & Schroeder.

56. The Pledge Agreement, as initially drafted by Dorsey & Whitney, required the signature of the Tribe. On January 29, 1999, the Tribe passed a resolution acknowledging that in connection with its authorization for the Tribe to sign the Pledge Agreement that it required certain amendments to the Management Agreement (the "Amendment") and that the Pledge Agreement include the Amendment. A true and correct copy of the Resolution is attached hereto as **Exhibit C**.

57. By virtue of this resolution, the Tribe joined the Amendment to the Pledge Agreement.

58. By virtue of the resolution, Dorsey & Whitney revised its initial draft of the Pledge Agreement to expressly reference the Amendment.

59. On February 12, 1999, President, the Tribe and Miller & Schroeder executed and entered into the Pledge Agreement.

60. The Pledge Agreement recites, among other things, that:

> (i) under the Management Agreement, the Tribe was obligated to make monthly reimbursements of [President's] development expenses and a guaranteed monthly payment of $500,000 (collectively, the "Repayment Amounts") and that obligation would survive any termination of the Management Agreement for cause; and

(ii) as security for the amounts due under the Loan, [President] pledged to Miller & Schroeder the Repayment Amounts and all other amounts payable by the Tribe to [President] under the Management Agreement, including, without limitation, the management fees (collectively, the "Agreement Payments").

61. Under the terms of the Pledge Agreement, the Tribe agreed, among other things:

(i) to pay the Repayment Amounts due [President] to an escrow account to be established between [President] and the Tribe without any set-off or deduction whatsoever notwithstanding any prior termination of the Management Agreement, or any defense, set off, counterclaim or recoupment arising out of any claim against [President] or Miller & Schroeder until all development expenses have been fully paid;

(ii) not to make any change to the Management Agreement affecting any section of the Management Agreement relating to the Repayment Amounts without the prior written consent of Miller & Schroeder;

(iii) that until the loan is paid in full, Miller & Schroeder would be entitled to the benefit of and to enforce the Tribe's obligations under the Management Agreement relating to the payment of the Repayment Amounts to the same extent as [President];

(iv) that all parties to the Pledge [Agreement] would be able to sue or be sued to enforce or interpret its terms, covenants and conditions or to enforce the obligations or rights of the parties to the Pledge [Agreement]; and

(v) to waive its sovereign immunity from suit to the extent necessary to allow [President] or Miller & Schroeder to bring any action at law or in equity to enforce or interpret the terms and conditions of the Management Agreement.

Submission Of Amendment Of Management Agreement To The National Indian Gaming Commission

62. On or about February 16, 1999, President submitted for approval by the National Indian Gaming Commission ("NIGC") the Amendment to the Management Agreement that had been executed by both President and the Tribe, which included the following amendments, among others:

(i) the ceiling on development expenses would be increased from $20,000,000 to $28,150,000;

(ii) the amount of time allowed for the Tribe to obtain an interest rate rebate for early repayment of the total amount of development expenses due under the Management Agreement would be increased from 1 year to 1 ½ years;

(iii) the source of repayment of the development expenses due to [President] from the Tribe under the Management Agreement in the case of termination for cause would change from the Tribe's share of net revenues and non-gaming related net revenues from "any gaming enterprise within the Tribe's jurisdiction" to such revenues from only the Tribe-owned Akwesasne Casino;

(iv) the term "all of Tribe's reservation" was added before the term "lands" in the Management Agreement provision regarding the Tribe's limited waiver of sovereign immunity.

A copy of the Amendment to the Management Agreement is attached hereto as **Exhibit D**.

63. As further security for repayment of the Loans through the Pledged Revenues, Dorsey & Whitney drafted and Miller & Schroeder and President executed an agreement to establish an escrow account with U.S. Bank Trust National Association (the

"Escrow Agent") providing for the safekeeping and investment of the Pledged Revenues pending disbursement of amount due with respect to the Loans (the "Escrow Agreement"). Under the Escrow Agreement, President and Miller & Schroeder agreed to authorize and direct the Tribe to pay all Pledged Revenues due and payable under the Management Agreement to the Escrow Agent until receiving notice that all obligations of President under the Loans were paid in full. The monies and investments held by the Escrow Agent were to be irrevocably held in trust for the benefit of Miller & Schroeder, to the extent of Miller & Schroeder's interest in the escrow fund. A copy of the Escrow Agreement is attached hereto as **Exhibit E.**

64. In response to President's submission of the Amendment for approval by the NIGC, the NIGC requested additional information from President and the Tribe in a letter dated February 16, 1999. Among other things, the NIGC letter stated that it would take an additional 30 days (plus the 30 days allowed by its regulations) to complete its review process. A true and correct copy of the NIGC Letter is attached hereto as **Exhibit F.**

The National Indian Gaming Commission And Its Regulations

65. In 1988, Congress enacted the Indian Gaming Regulatory Act ("IGRA"), "to provide a statutory basis for the regulation of gaming by an Indian tribe adequate to shield it from organized crime and other corrupting influences" and "a statutory basis for the operation of gaming by an Indian tribe as a means of promoting economic development, self-sufficiency, and strong tribal governments." 25 U.S.C. Section 2702;

see also S.Rep. No466, 100th Cong., 2d Sess. 15-16 (1988) U.S.C.C.A.N. 3071, 3085.0-3086. To this end, IGRA provides for extensive federal oversight of all but the most rudimentary forms of Indian gaming. *Tamiami Partners, Ltd. V. Miccosukke Tribe of Indians of Fla.,* 63F.3d 1030, 1033 (11th Cir. 1995). IGRA established the National Indian Gaming Commission, a commission composed of three individuals appointed by the President and the Secretary of the Interior, to promulgate regulations necessary to implement IGRA (the "Regulations") and to oversee various aspects of the Indian gaming industry. 25 U.S.C. Section 2704.

66. The NIGC's duties include the review and approval of casino management contracts between Indian tribes and management contractors. In addition to management contracts, IGRA and the Regulations require the NIGC to review and approve: (1) certain types of collateral agreements, (2) assignments of rights under a management contract and (3) modifications of a management contract. Agreements requiring approval that are not properly approved are void.

67. The NIGC states its mission as follows:

> Mission and Responsibilities: The Commission's primary mission is to regulate gaming activities on Indian lands for the purpose of shielding Indian tribes from organized crime and other corrupting influences; to ensure that Indian tribes are the primary beneficiaries of gaming revenue; and to assure that gaming is conducted fairly and honestly by both operators and players.
>
> To achieve these goals, the Commission is authorized to conduct investigations; undertake enforcement actions, including the issuance of notices of violation, assessment of civil fines, and/or issuance of closure orders; conduct background investigations; conduct audits; and review and approve Tribal gaming ordinances.

Dorsey's Knowledge That NIGC Approval Of The Amendment And The Loan Documents Including Pledge Agreement Is Required

68. On or about January 19, 1999, attorneys at Dorsey, specifically Christopher Karns and Paula Rindels, communicated between one another over the status of NIGC review of the Loan Documents. In an e-mail communication from Mr. Karns to Ms. Rindels, Mr. Karns writes:

> [T]he loan agreement must be submitted to NIGC for review. While it is our understanding that the terms of the loan from M&S to the St. Regis Mohawk Casino management company do not contain terms which would grant M&S authority to manage the Casino, and that the interest granted to M&S is merely in the development repayment amounts to the manager (as opposed to the management fee), NIGC nevertheless needs to review the loan documents to ensure that the loan agreement does not provide M&S with such authority or interest.

A true and correct copy of this e-mail communication is attached hereto as **Exhibit G.**

69. In response to Mr. Karns' e-mail communication, Ms. Rindels responded with an e-mail communication of her own in which she wrote:

> During my long meeting conference this morning, I noticed the parts of your original e-mail below regarding M&S not having an interest in the management fee. The way this deal is currently structured they do have such an interest. Both the amounts paid as management fees and the amounts paid as loan repayment amounts secure [repayment of] the loan to the manager. See the draft Notice of Acknowledgement which I've enclosed. Do we still have any chance with NIGC?

A true and correct copy of this e-mail communication is attached hereto as **Exhibit H.**

70. On January 29, 1999, Ms. Rindels sent an e-mail communication to Virginia Boylan, Mark Jarboe, and Jim Townsend, all members of Dorsey's Indian and Gaming Law Department and acknowledged legal "experts" in the area of Indian Gaming

concerning the Loans and the requirement of NIGC approval prior to the closing of the Loans. In this e-mail, Ms. Rindels forwards a portion of the January 19th e-mail from Mr. Karns, quoting the part of 25 CFR § 533.7, which reads: "Management contracts and changes in persons with a financial interest in or management responsibility for a management contract, that have not been approved by the Secretary of the Interior or the Chairman in accordance with requirements of this part, are void." After citing to this provision, Ms. Rindels raises the following issues for their consideration:

> Then why would the NIGC not having reviewed the [loan] documents not hold up the deal? How can our client be protected? Is there are (sic) chance that, if for some unforeseen reason the NIGC later says our loan documents do give M&S a financial interest in the management agreement, either or both of the management agreement and the loan documents would be void? Or is that not what the sentence in the regs says?

A true and correct copy of this e-mail communication is attached hereto as **Exhibit I.**

71. Later in the day of January 29, Ms. Boylan replied to Ms. Rindels e-mail by stating: " This is a very tough issue - - however, I think we have done enough of these to know what NIGC is looking for (and there are "instructions" from them on this issue) - - if there is a question, then of course we must wait". A true and correct copy of this e-mail communication is attached hereto as **Exhibit J.**

72. Dorsey's understanding of the Indian Gaming Regulatory Act and the Regulations promulgated thereunder which provide for the review and approval by the NIGC of Indian Gaming Management Agreements and certain types of collateral agreements was that the NIGC must approve the Pledge Agreement in order for it to be enforceable by Miller & Schroeder and any of its Bank Participants.

73. Ignoring the conclusions and professional reservations of his colleagues that "either or both of the management agreement and the loan documents would be void" without NIGC approval, Dorsey advised and represented to Miller & Schroeder that Miller & Schroeder could close the Loans without awaiting NIGC approval of the Amendment or the Loan Documents, including the Pledge Agreement, and that repayment of the Loans was secured by the Pledged Revenues without any reservation or risk that NIGC approval was a precondition for its enforcement against the Tribe.

74. On February 24, 1999, Rindels and Karns e-mailed each other with copies to Jarboe on several occasions expressing their continued concerns and reservations over the requirement of NIGC approval of the Pledge Agreement:

February 24, 1999 10:03 a.m. from Rindels to Karns:

> I assume that our requests for NIGC review of the Notice of Pledge and other loan documents has not been withdrawn and is still proceeding. We do want it to proceed, especially for the Notice of Pledge. Could you find out whether they want us to submit the executed Notice of Pledge in connection with their review? If so I can send you a copy today. There have been several changes from the version originally submitted and I will highlight those changes as well..."

February 24, 1999 2:30 p.m. from Karns to Rindels:

> I put calls in to Robert Williams at NYSRWB and Elaine Trimbel at NIGC. I have yet to hear back from either of them...fyi.

February 24, 1999 2:39 p.m. from Karns to Rindels:

> I finally spoke with Elaine Trimble at NIGC. She said that the documents are still under review, but that it will likely take a little bit longer than originally anticipated to conduct their review because the Tribe needs to have the amendment to raise the ceiling up above $20M and has asked that the amendment be processed prior to the loan documents being approved. (in other words, perhaps we had the cart before the horse, from NIGC's perspective).

> I can't imagine why raising the ceiling would take a lot of time. It would appear to take minimal time to do. Nevertheless, the skeletal staff at NIGC are focused on the amendment right now, not the loan documents.
>
> She does want to see the executed Notice of Pledge.

February 24, 1999 4:43 p.m. from Rindels to Karns:

> I don't think we are particularly concerned at this point – since we've now funded the loans! – with how long it takes! And we would agree that the amendment to the management agreement is first priority – no problem there.

A true and correct copy of these e-mail communications are attached hereto as **Exhibit K.**

75. As experts in the law of Indian Gaming, Dorsey & Whitney knew that it was critically important to obtain NIGC approval of the Pledge Agreement. Without NIGC approval, Dorsey & Whitney knew that the Pledge Agreement would not be enforceable against the Tribe. The enforceability of the Pledge Agreement was critical to the repayment of the Loans because in the Pledge Agreement the Tribe agreed, among other things: (i) to pay the Pledged Revenues into an Escrow Account designated by Miller & Schroeder and President; (ii) to pay the Pledged Revenues into the Escrow Account notwithstanding the termination of the Management Agreement; (iii) to pay all Pledged Revenues into the Escrow Account without any set-off or deduction whatsoever, notwithstanding any prior termination of the Management Agreement, or any defense, set-off, counterclaim or recoupment arising out of any claim against President or Miller & Schroeder; (iv) to be sued by Miller & Schroeder before a United States District Court or an appropriate state court to enforce or interpret the terms of the Pledge Agreement; (v) to waive any right to proceed before any Tribal Court; and (vi) to waive its sovereign

immunity from suit to the extent necessary to allow Miller & Schroeder to bring any action to enforce or interpret the Pledge Agreement.

76. To this date, the NIGC has not approved the Amendment, the Loan Documents or the Pledge Agreement and the Tribe has taken the position that, therefore, the Pledge Agreement is not enforceable against the Tribe thereby rendering the Loans unsecured, uncollectable and worthless.

77. In addition to its failure to correctly advise and inform Miller & Schroeder and the Bank Participants in the Loans that the Pledged Revenues did not secure repayment of the Loans, Dorsey & Whitney also failed to advise and inform Miller & Schroeder and the Bank Participants of additional deficiencies in the structure of the financing of President by Miller & Schroeder and the Bank Participants. Among these deficiencies is President's failure to perform its obligations in favor of the Tribe raised by NIGC in its letter of February 16, 1999, identified above as **Exhibit F**. Based upon its knowledge and experience in dealing with the NIGC, Dorsey & Whitney knew that this letter communicated serious deficiencies by President in the performance of its obligation in favor of the Tribe. Dorsey & Whitney also knew that these deficiencies could only be satisfied by communication from the Tribe to the NIGC that President was in fact honoring its obligations. Dorsey & Whitney knew that any communication by President with the NIGC to address these issues would not be satisfactory to the NIGC. Furthermore, these deficiencies foreshadowed, as Dorsey & Whitney knew, that there was a substantial likelihood of future disputes between President and the Tribe which would seriously jeopardize repayment of the Loans. Based upon its knowledge of these and other related circumstances, it was unreasonable and professional malpractice for

Dorsey to fail to advise Miller & Schroeder and the Bank Participants that they should delay funding the Loans until after the issues raised by the NIGC in its February 16th letter were resolved, if at all, and until after the NIGC had approved the Amendment, the Loan Documents and the Pledge Agreement. Moreover, it was unreasonable and a matter of professional malpractice for Dorsey & Whitney to advise Miller & Schroeder and the Bank Participants to rely on any assurances by President that the approval of the Amendment by the NIGC would be forthcoming.

Miller & Schroeder's Reliance On The Advice And Misrepresentations Of Dorsey & Whitney

78. Miller & Schroeder reasonably relied on Dorsey & Whitney's flawed and erroneous advice and misrepresentations that the Pledge Agreement was valid and enforceable and that the Loans were secured by the Pledged Revenues despite the fact that the NIGC did not approve the Pledge Agreement.

79. Based upon the flawed and erroneous advice and misrepresentations of Dorsey & Whitney, and despite the absence of NIGC approval of the Amendment and the Loan Documents including the Pledge Agreement, Miller & Schroeder closed and funded the Loans to President in accordance with the Loan Documents.

Bank Participants' Reliance On The Representations Made By Miller & Schroeder

80. Based upon Dorsey & Whitney's advice, Miller & Schroeder believed that repayment of the Loans was secured by the Pledged Revenues. Accordingly, Miller & Schroeder represented to the Bank Participants, both orally and in writing that repayment of the Loans was secured by the Pledged Revenues.

81. In reliance upon Miller & Schroeder's representation that payment of the Loans was secured by the Pledged Revenues the Bank Participants purchased participation interests in the Loans.

Termination Of The Management Agreement And Default By President

82. The Akwesasne Casino opened for business under President's management on April 11, 1999.

83. In April of 1999, President defaulted on the Loans.

84. On or about April 17, 2000, the Tribe terminated all "gaming licenses" of individuals employed by President, effectively removing President from the Akwesasne Casino premises. Such termination of gaming licenses was occasioned by alleged breaches by President of the Tribal Gaming Commission Regulations and/or laws or regulations governing the State Compact between the State of New York and the Tribe.

85. On or about August 2000, Miller & Schroeder and the Bank Participants were advised by the Tribe that the Tribe did not intend to adhere to the terms and conditions of the Notice of Acknowledgement and Pledge Agreement since it had not been approved by NIGC.

Dorsey & Whitney's Breach Of Fiduciary Duties To Miller & Schroeder And The Bank Participants

86. At least no later than the date of the closing of the Loans (February 24, 1999), Dorsey & Whitney knew or should have known that the transaction documents failed to fully protect the interests of Miller & Schroeder and the Bank Participants and

that Miller & Schroeder's and the Bank Participants' rights to collect the unpaid balances on the Loans had been compromised by Dorsey & Whitney's negligence.

87. Following the default by President and the Tribe's statements that they are not bound by the provisions of the Loan Documents, Dorsey & Whitney advised Miller & Schroeder and the Bank Participants of alternative courses of action that could be taken to collect the outstanding balances on the Loans. Dorsey & Whitney however failed to advise either Miller & Schroeder or the Bank Participants of the potential problems that would be encountered as a result of Dorsey & Whitney's own negligence.

88. Based on Dorsey & Whitney's recommendation, Miller & Schroeder commenced an action in the United States District Court for the District of Minnesota against President to collect the unpaid balances owing on the Loans. On or about April 22, 2002, the Court entered judgement against President in favor of Miller & Schroeder, as the agent for the Bank Participants, in the combined amounts of $15,681,528.16 plus interest.

89. The Judgment is presently uncollectible because President has no assets from which to pay the Judgment.

90. Bremer Business Finance Corporation ("Bremer") was one of the financial institutions that purchased a Participation Interest in the St. Regis II Loan.

91. Dorsey & Whitney represented Miller & Schroeder as to litigation that was commenced by Bremer against Miller & Schroeder for negligent misrepresentations and fraud in the inducement, among other claims, in connection with the structuring and syndication of the St. Regis I and II Loans seeking, among other claims for relief, rescission of its Participation Agreement under which it purchased its Participation

Interest in the St. Regis II Loan and the return of all monies it paid for its Participation Interest in the St. Regis II Loan.

92. Despite the fact that it was Dorsey & Whitney's own negligence and misrepresentations that resulted in damage to Bremer and led to Bremer's claims, Dorsey & Whitney undertook to represent Miller & Schroeder as its lawyers in the defense of the claims of Bremer. In connection with undertaking the legal representation of Miller & Schroeder, a partner at Dorsey & Whitney drafted a Memorandum dated December 8, 2000 in which he copied, among others, William J. Wernz, the "Ethics Partner" of Dorsey & Whitney. In this memorandum, the attorney wrote:

> By copy of this letter to Tom and Bill, note that although not named as a defendant, the number of allegations are made by Bremer that Dorsey & Whitney was negligent in the preparation of the documents, not obtaining NIGC approval for the Amendment and "as experts in Indian gaming, Miller & Schroeder and the law firm knew that it was critically important to obtaining NIGC approval of the Pledge Agreement". I suspect that the reason these are mentioned in the draft Compliant is for the purpose of trying to disqualify us as counsel to Miller & Schroeder if this proceeds to litigation. I would ask that Bill [Wernz] review this to determine whether or not we are disqualified from the representation merely because Paula may be a fact witness. My general understanding is that this does not per se disqualify us. Oppenheimer Wolff & Donnelley is lobbying Miller & Schroeder to represent them on this issue but I would obviously prefer to keep all this within the firm to the extent we can.

A true and correct copy of the Memorandum dated December 8, 2000 is attached hereto as **Exhibit L**.

93. Dorsey & Whitney represented Miller & Schroeder in defending the Bremer's claims against Miller & Schroeder without disclosing to Miller & Schroeder that the claims arose because of Dorsey & Whitney's misfeasance and/or malfeasance, all as hereinbefore described. Further, Dorsey & Whitney charged and collected from Miller

& Schroeder in excess of $700,000 as and for attorney's fees in connection with its representation of Miller & Schroeder.

94. Dorsey & Whitney had an obligation to advise Miller & Schroeder and the Bank Participants as part of the discussion as to alternative courses of action that could be taken to collect the unpaid outstanding balances on the Loans to President from either the Tribe or the President R.C. - St.Regis Management Company to consult new and independent counsel so that Miller & Schroeder and the Bank Participants could receive proper advise relative to all of their legal rights and remedies including any rights and remedies involving Dorsey & Whitney.

Marshall Investments Corporation As Agent Of Miller & Schroeder Investments Corporation

95. The Participation Agreements entered into with the Bank Participants provide that Miller & Schroeder will service and administer the Loans for the benefit of the Bank Participants and collect all payments and collections due and exercise all rights and interests with respect to the Loans, Loan Documents and all collateral and security.

96. Miller & Schroeder entered into Subservicing Agreements with Marshall Investments.

97. Pursuant to the Subservicing Agreements, Marshall Investments is the authorized agent of Miller & Schroeder and is authorized to collect all payments and collections due from the Borrower and to exercise all rights and interests with respect to the Loans, Loan Documents and all collateral and security in the same manner as Miller & Schroeder was authorized to so act.

V.
CAUSES OF ACTION

FIRST CLAIM FOR RELIEF

Professional Negligence / Malpractice – Intended Beneficiary

98. Plaintiffs repeat and reallege each and every allegation set forth in paragraphs 1 through 97 of the Complaint as if fully set forth herein.

99. Dorsey & Whitney held themselves out as legal experts in the area of Native American Financing and gaming law and was retained by the Plaintiffs on the basis of its purported expertise in these areas. Dorsey & Whitney, in its representation of the Plaintiffs, was negligent and deviated from the appropriate standard of care owed to its clients. Specific instances of Dorsey & Whitney's negligence, by way of example but not by way of limitation, are that it: (1) failed to structure the Loan Documents to insure they would be valid and enforceable against both President and the Tribe; (2) failed to obtain NIGC approval of the Loan Documents, including the Pledge Agreement; (3) failed to advise Plaintiffs of the risks of funding the Loans without obtaining NIGC approval; (4) failed to structure the loan transaction in such a way as to secure payment in the event NIGC approval was not obtained; (5) failed to obtain a waiver of sovereign immunity as to the equitable remedies of constructive trust and unjust enrichment; (6) advised Plaintiffs that the Loan Documents did not require the approval of the NIGC in order to be enforceable against the Tribe; and (7) advised Plaintiffs that NIGC approval would be forthcoming within a reasonable time after funding the Loans.

100. The legal services provided by Dorsey & Whitney were intended to benefit Miller & Schroeder and the Bank Participants and it was reasonably foreseeable

that any negligence by Dorsey & Whitney would materially harm both Miller & Schroeder and the Bank Participants.

101. The Bank Participants are intended beneficiaries of the legal services performed by Dorsey & Whitney and were entitled and expected to rely on the legal services performed by Dorsey & Whitney in deciding to purchase Participation Interests in the Loans.

102. As a direct and proximate result of Dorsey & Whitney's negligence, the Plaintiffs have been damaged in an amount to be proven at trial but which is expected to be in excess of $20,000,000.

SECOND CLAIM FOR RELIEF

Negligent Misrepresentation

103. Plaintiffs repeat and reallege each and every allegation set forth in paragraphs 1 through 102 of the Complaint as if fully set forth herein.

104. Dorsey & Whitney, in their legal representation of Plaintiffs, provided materially false legal advise including, without limitation, that the Loans were fully secured by the Pledged Revenues and enforceable against the Tribe without NIGC approval and, further, that NIGC approval would be forthcoming in a reasonable time after funding the Loans.

105. In providing its legal advice to the Plaintiffs, Dorsey & Whitney failed to exercise reasonable care and competence.

106. Plaintiffs relied and were justified in relying on the false advice given to them by Dorsey & Whitney.

107. As a direct and proximate result of Dorsey & Whitney's negligent misrepresentations, the Plaintiffs have been damaged in an amount to be proven at trial but which is expected to be in excess of $20,000,000.

THIRD CLAIM FOR RELIEF

Breach of Contract

108. Plaintiffs repeat and reallege each and every allegation set forth in paragraphs 1 through 107 of the Complaint as if fully set forth herein.

109. At all times relevant herein, a contract for professional services existed between Plaintiffs and Dorsey & Whitney.

110. The contract for professional services required Dorsey & Whitney to competently represent the Plaintiffs in connection with the structuring, documenting and closing of the Loans.

111. By reason of the acts set forth herein, Dorsey & Whitney breached its obligations under the professional services contract.

112. As a direct and proximate result of Dorsey & Whitney's breach of contract, Plaintiffs have been damaged in an amount to be proven at trial but which is expected to be in excess of $20,000,000.

FOURTH CLAIM FOR RELIEF

Breach of Fiduciary Duty

113. Plaintiffs repeat and reallege each and every allegation set forth in paragraphs 1 through 112 of the Complaint as if fully set forth herein.

114. As a result of Dorsey &Whitney's actions set forth herein, certain Bank Participants brought actions against Miller & Schroeder asserting claims of misrepresentation and seeking money damages. Dorsey & Whitney was retained as counsel for Miller & Schroeder and Marshall Investments in the defense of these actions.

115. Dorsey & Whitney was required, under the Rules of Professional Responsibility and other rules governing lawyers to disclose to Miller & Schroeder and Marshall Investments: (1) that Dorsey & Whitney had a conflict of interest in representing them in suits brought by Bank Participants; and (2) that Miller & Schroeder had a third party claim against Dorsey & Whitney which should be asserted by Miller & Schroeder in the suits brought by Bank Participants. Dorsey & Whitney failed and otherwise neglected to make such disclosures and continued in their representation of Miller & Schroeder and Marshall Investments.

116. On information and belief, Miller & Schroeder and Marshall Investments has paid Dorsey & Whitney a sum in excess of $700,000 for legal services in the defense of these lawsuits and in connection with the structuring, preparation of documents and closing of the Loans.

117. As a direct and proximate result of Dorsey & Whitney's breach of fiduciary duty it is obligated to reimburse the Trustee and Marshall Investments for any fees paid to it in the defense of the Bank Participants' lawsuits and in structuring, preparation of documents and closing of the Loans.

VI.
REQUEST FOR RELIEF

WHEREFORE, Plaintiffs demand judgment against Defendant as follows:

1. An order granting judgement for Plaintiffs against Dorsey & Whitney in an amount to be proven at trial;

2. An order awarding Plaintiffs pre and post judgement interest, reasonable costs and disbursements and attorneys fees; and

3. An order granting such other and further relief as the Court deems just and equitable.

Dated: October 2, 2003

Leonard, O'Brien, Spencer, Gale & Sayre

By /s/ Edward W. Gale
Edward W. Gale (# 033078)
55 East Fifth Street, Suite 800
St. Paul, Minnesota 55101
Telephone: (651) 227-9505

Law Offices of Thomas P. Puccio

By /s/ Thomas P. Puccio
Thomas P. Puccio (NY Atty # 8403)
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230 Park Avenue
New York, New York 10169
Telephone: (212) 883-6383

Attorneys For Plaintiffs Bank Participants, Brian F. Leonard, Trustee, For SRC Holding Corporation, F/K/A Miller & Schroeder, Inc. and Its Subsidiaries and Marshall Investments Corporation, A Delaware Corporation

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re: **SRC Holding Corporation,** **f/k/a Miller & Schroeder, Inc.** **and its subsidiaries,** **Debtors.**	**Chapter 7 Case** **BKY Case Nos. 02-40284 to 02-40286** **Jointly Administered**

Exhibit No.	Description of Document
A	Fourth Amended and Restated Management Agreement dated December 27, 1997 between President R.C. – St. Regis Management Company and the St. Regis Mohawk Tribe
B	Notice and Acknowledgment of Pledge Agreement dated February 12, 1999 among the Tribe, President and Miller & Schroeder
C	St. Regis Mohawk Tribal Council Resolution dated January 29, 1999 passed by Tribal Council with its authorization for the Tribe to sign the Notice and Acknowledgment of Pledge Agreement
D	Amendment dated as of November 7, 1997 to the Fourth Amended and Restated Management Agreement
E	Agreement to establish Escrow Account with U.S. Bank Trust National Association providing for the safekeeping and investment of the Pledged Revenues pending disbursement of amount due with respect to the Loans
F	NIGC Letter dated February 16, 1999 to St. Regis Management Company and the St. Regis Mohawk Tribe requesting additional information
G	January 19, 1999 E-Mail communication from Dorsey attorney Christopher Karns to Dorsey attorney Paula Rindels
H	January 20, 1999 E-Mail communication from Dorsey attorney Paula Rindels to Dorsey attorney Christopher Karns
I	January 29, 1999 E-Mail communication from Dorsey attorney Paula Rindels to Virginia Boylan, Mark Jarboe, and Jim Townsend, all members of Dorsey's Indian and Gaming Law Department

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re: **SRC Holding Corporation,** **f/k/a Miller & Schroeder, Inc.** **and its subsidiaries,** **Debtors.**	)	**Chapter 7 Case** **BKY Case Nos. 02-40284 to 02-40286** **Jointly Administered**

Exhibit No.	**Description of Document**
J	January 29, 1999 E-Mail communication from Dorsey attorney Virginia Boylan to Dorsey attorney Paula Rindels
K	February 24, 1999 E-Mail communications between Dorsey attorney Christopher Karns and Dorsey attorney Paula Rindels
L	Dorsey & Whitney Memorandum dated December 8, 2000 copied to, among others, William J. Wernz, the "Ethics Partner" of Dorsey & Whitney.

FOURTH
AMENDED AND RESTATED
MANAGEMENT AGREEMENT

BETWEEN

THE ST. REGIS MOHAWK TRIBE

and

PRESIDENT R.C.--ST. REGIS MANAGEMENT COMPANY

November 7, 1997

TABLE OF CONTENTS

FOURTH
AMENDED AND RESTATED
MANAGEMENT AGREEMENT

THIS FOURTH AMENDED AND RESTATED MANAGEMENT AGREEMENT (this "Agreement") is made and entered on the date set forth below, by and between THE ST. REGIS MOHAWK TRIBE, a federally recognized Indian tribe, in its capacity as a sovereign government and as a proprietor, ("TRIBE"), and PRESIDENT R.C.–ST. REGIS MANAGEMENT COMPANY, a New York Partnership, ("MANAGER").

RECITALS

WHEREAS, TRIBE is a federally recognized Indian tribe pursuant to the Treaty with the Seven Nations of Canada, 7 Stat. 55 (May 31, 1796), possessing sovereign power over the St. Regis Mohawk reservation;

WHEREAS, TRIBE desires to engage in Class II and Class III gaming as authorized by the Indian Gaming Regulatory Act of 1988, 25 U.S.C. §§ 2701-2721 (hereafter "IGRA") and the regulations promulgated thereunder;

WHEREAS, TRIBE requires the financial assistance, technical assistance and expertise to develop, construct, manage, operate and maintain Class II and Class III gaming facilities on lands subject to the jurisdiction of TRIBE so as to increase TRIBE'S revenues and to enhance TRIBE'S economic self-sufficiency and self-government;

WHEREAS, MANAGER is experienced in the financing, development, construction, operation and maintenance of gaming facilities and operations;

WHEREAS, TRIBE desires to engage MANAGER to finance, construct, improve, manage, operate and maintain Class II and Class III gaming facilities as described below in conformance with the terms and conditions of this Agreement;

WHEREAS, TRIBE, in the exercise of its governmental powers, has authorized the conduct of gaming pursuant to IGRA and the Compact as defined below, under the auspices of TRIBE; and

WHEREAS, MANAGER desires to perform the above-described functions as exclusive manager (without a proprietary interest) of TRIBE for such purposes.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby covenant and agree as follows:

SECTION 1. DEFINITIONS

In addition to any other terms and phrases defined herein, the following terms used in this Agreement shall have the definitions set forth below:

1.1 CAPITAL ITEMS. "Capital Items" means any property, plant, or equipment necessary and proper for the operation of the Tribal Gaming Operation with a cost of One Thousand Dollars ($1,000) or more and a useful life of more than one year.

1.2 CHAIRMAN. "Chairman" means the Chairman of the National Indian Gaming Commission.

1.3 CLASS II GAMING. "Class II Gaming" means games of chance which meet the definition of "Class II gaming" contained in IGRA, specifically 25 U.S.C. § 2703(7), including without limitation the games defined as Class II gaming in 25 C.F.R § 502.3.

1.4 CLASS III GAMING. "Class III Gaming" means games of chance which meet the definition of "Class III gaming" contained in IGRA, specifically 25 U.S.C. § 2703(8), including without limitation the games defined as Class III gaming in 25 C.F.R. § 502.4.

1.5 COMMISSION. "Commission" as used herein refers to the National Indian Gaming Commission established by IGRA.

1.6 COMPACT. The "Compact" shall mean the St. Regis Mohawk–State of New York Gaming Compact negotiated by and between TRIBE and the State of New York.

1.7 CONCESSIONS. "Concessions" means any restaurant, snack bar, stand, facility, station, area or any and all other non-gaming activities operated as part of the Tribal Gaming Operation having the exclusive authority to sell souvenirs, soft drinks, candies, tobacco products, alcoholic beverages, foods and related items or to provide non-gaming services on the Site.

1.8 DEVELOPMENT EXPENSES. "Development Expenses" shall have the meaning set forth in Section 6.1(B) herein.

1.9 EFFECTIVE DATE. "Effective Date" means the date of the approval of this Agreement by the Chairman of the Commission.

1.10 ELECTED OFFICIAL. "Elected Official of TRIBE" for purposes of this Agreement, shall mean all officials of TRIBE elected by the tribal membership, or appointed or selected by TRIBE.

1.11 EXECUTIVE DIRECTOR. "Executive Director" means TRIBE'S representative specifically identified by the Tribal Gaming Commission to MANAGER as the individual responsible for monitoring the operations of the Tribal Gaming Operation under the supervision of the Tribal Gaming Commission and with whom MANAGER will ordinarily officially deal with regard to the operations of the Tribal Gaming Operation.

1.12 FACILITY. "Facility" shall mean the facility as described in Sections 4.1 and 6.2 herein in which Class II and Class III Gaming will be conducted pursuant to this Agreement.

1.13 GAMING. "Gaming" means all forms of Class II gaming which are legal in the State of New York and all forms of Class III gaming which TRIBE has or will have authority to conduct pursuant to the Compact, any amendments or modifications thereof or any other compacts or agreements which may be negotiated between TRIBE and the State of New York under IGRA.

1.14 GAMING NET REVENUES. "Gaming Net Revenues" means gross gaming revenues of the Tribal Gaming Operation, less amounts paid out as, or paid for, prizes and total gaming-related Operating Expenses, excluding the Management Fees. Gaming Net Revenues shall be determined, as applicable, either on (i) a "cash flow" basis as set forth in Section 1.15 herein ("Gaming Net Revenues (Cash Flow)") or (ii) an "accrual" basis as set forth in Section 1.16 herein ("Gaming Net Revenues (GAAP/Accrual)"). Gaming Net Revenues shall be computed in conformance with generally accepted accounting principles (GAAP).

1.15 GAMING NET REVENUES (CASH FLOW). "Gaming Net Revenues (Cash Flow)" means gross gaming revenues of the Tribal Gaming Operation, less amounts paid out as, or paid for, prizes and total gaming-related Operating Expenses (Cash Flow), excluding the Management Fees. Gaming Net Revenues (Cash Flow) shall be computed in conformance with generally accepted accounting principles (GAAP).

1.16 GAMING NET REVENUES (GAAP/ACCRUAL). "Gaming Net Revenues (GAAP/Accrual)" means gross gaming revenues of the Tribal Gaming Operation, less amounts paid out as, or paid for, prizes and total gaming-related Operating Expenses (GAAP/Accrual), excluding the Management Fees. In determining Gaming Net Revenues (GAAP/Accrual), TRIBE shall be deemed to repay the principal amount of the Development Expenses subsequent to the determination of the Management Fee utilizing TRIBE'S share of the Gaming Net Revenues and Non-Gaming Net Revenues and also utilizing cash flow available to TRIBE from the Tribal Gaming Operation's depreciation expense. Gaming Net Revenues (GAAP/Accrual) shall be computed in conformance with generally accepted accounting principles (GAAP). TRIBE and MANAGER hereby stipulate that "Gaming Net Revenues (GAAP/Accrual)" shall have the same meaning as "net revenues" as defined in 25 C.F.R. § 502.16.

1.17 GENERAL MANAGER. The "General Manager" shall be that person hired as an employee of Tribal Gaming Operation pursuant to Section 7.1(A) herein to be responsible for the day-to-day operations of the Tribal Gaming Operation.

1.18 KEY EMPLOYEE. "Key Employee" means:

(A) A person employed by the Tribal Gaming Operation who performs one or more of the following functions:

(1) Bingo callers, floor supervisors, etc.;

(2) Counting room supervisor;

(3) Chief of security;

(4) Custodian of gaming supplies or cash;

(5) Floor manager;

(6) Pit boss; and

(7) Custodian of gambling devices including persons with access to cash and accounting records within such devices;

(B) If not otherwise included, any other person employed by the Tribal Gaming Operation whose total cash compensation is in excess of Fifty Thousand Dollars ($50,000) per year; or

(C) If not otherwise included, the four most highly compensated persons employed by the Tribal Gaming Operation.

1.19 MANAGEMENT FEES. "Management Fees" means the total fees paid to MANAGER, including the percentage of Gaming Net Revenues and Non-Gaming Net Revenues received by MANAGER pursuant to the terms and conditions of this Agreement.

1.20 MINI-GAMES. "Mini-Games" means Class II gaming commonly known as bingo, including pulltabs and floor games, played at a rapid pace at intermission and immediately preceding or following the Session.

1.21 MONTHLY BASE PAYMENT. "Monthly Base Payment" means the minimum amount of Development Expenses repaid each month by TRIBE to MANAGER which shall be calculated based upon (i) the amount of Development Expenses actually advanced by MANAGER pursuant to Section 6.1(B) of this Agreement, up to the amount of Twelve Million Dollars ($12,000,000), plus applicable interest set forth in said section, and (ii) a five-year repayment period commencing upon the opening date of the Tribal Gaming Operation, unless mutually accelerated or extended in writing by MANAGER and TRIBE.

1.22 NON-GAMING NET REVENUES. "Non-Gaming Net Revenues" means gross revenues from all non-gaming sources of the Tribal Gaming Operation, including without limitation Concessions, less total non-gaming related Operating Expenses, excluding the Management Fees. Non-Gaming Net Revenues shall be computed in conformance with generally accepted accounting principles (GAAP).

1.23 OPERATING EQUIPMENT. "Operating Equipment" means any equipment necessary and proper for the operation of the Tribal Gaming Operation with a cost under One Thousand Dollars ($1,000) and a useful life of under one year.

1.24 OPERATING EXPENSES. "Operating Expenses" means all costs and expenses incurred by the Tribal Gaming Operation in conjunction with the operation and maintenance of the Tribal Gaming Operation, which shall be determined, as applicable, either on (i) a "cash flow" basis

as set forth in Section 1.25 herein ("Operating Expenses (Cash Flow)") or (ii) an "accrual" basis as set forth in Section 1.26 herein ("Operating Expenses (GAAP/Accrual)").

1.25 OPERATING EXPENSES (CASH FLOW). "Operating Expenses (Cash Flow)" means all costs and expenses incurred by the Tribal Gaming Operation in conjunction with the operation and maintenance of the Tribal Gaming Operation, including without limitation the following:

(A) Personnel expenses, salaries, wages, fringe benefits, bonuses, and employee profit sharing payments and any and all other compensation, if any, excluding the Management Fees; and

(B) Nonpersonnel expenses, including telephone; inventory; materials and supplies; utilities; repairs and maintenance of the Facility and Site, including all parking areas; insurance and bonding; advertising; accounting and audit fees; security costs; legal fees; Operating Equipment; trash removal; all licenses and fees necessary for the operation of the Tribal Gaming Operation (subject to the terms set forth in Sections 3.5 and 3.6); applicable taxes, including penalties and interest; operating reserves; non-developmental amortization and depreciation expenses; non-developmental interest expense; bad debt expense; payments due to the Commission; contractual expenses related to maintenance and operation of equipment; complimentary services; and other expenses designated as Operating Expenses in this Agreement; any non-enumerated expenses allowed as Operating Expenses in the annual audit; and such other expenses as may be mutually approved by TRIBE and MANAGER from time to time as Operating Expenses of the Tribal Gaming Operation.

1.26 OPERATING EXPENSES (GAAP/ACCRUAL). "Operating Expenses (GAAP/Accrual)" means all costs and expenses incurred by the Tribal Gaming Operation in conjunction with the operation and maintenance of the Tribal Gaming Operation, including without limitation the following items (all of which, whether listed or unlisted, are to be determined in accordance with generally accepted accounting principles (GAAP)):

(A) Personnel expenses, salaries, wages, fringe benefits, bonuses, and employee profit sharing payments and any and all other compensation, if any, excluding the Management Fees; and

(B) Nonpersonnel expenses, including telephone; inventory; materials and supplies; utilities; repairs and maintenance of the Facility and Site, including all parking areas; insurance and bonding; advertising; accounting and audit fees; security costs; legal fees; Operating Equipment; trash removal; all licenses and fees necessary for the operation of the Tribal Gaming Operation (subject to the terms set forth in Sections 3.5 and 3.6); applicable taxes, including penalties and interest; amortization and depreciation expenses; interest expense; bad debt expense; payments due to the Commission; contractual expenses related to maintenance and operation of equipment; and other expenses designated as Operating Expenses in this Agreement; any non-enumerated expenses allowed as Operating Expenses in the annual audit; and such other expenses as may be mutually approved by

TRIBE and MANAGER from time to time as Operating Expenses of the Tribal Gaming Operation.

1.27 OPERATION. "Operation" means any business of TRIBE which operates Class II and Class III Gaming and related non-gaming operations including without limitation all hotel, resort, tourist, sports, concessions and gaming support operations.

1.28 ORDINANCE. "Ordinance" means the laws passed by TRIBE to regulate Class II and Class III Gaming which are attached hereto as Exhibit "A," including such changes as may be adopted from time to time.

1.29 PERSONS HAVING A DIRECT OR INDIRECT FINANCIAL INTEREST IN THIS AGREEMENT. "Person(s) having a direct or indirect financial interest in this Agreement" shall have the definition set forth in 25 C.F.R. § 502.17.

1.30 PRIMARY MANAGEMENT OFFICIAL. "Primary Management Official" means:

(A) The Person having management responsibility for this Agreement, including the General Manager;

(B) Any person who has authority:

(1) To hire and fire employees; or

(2) To set up working policy for the gaming operations; or

(C) The chief financial officer or other person who has financial management responsibility.

1.31 PROJECT. "Project" means the process of planning, developing, constructing and equipping any Facility or Operation.

1.32 RELATIVE. "Relative" means an individual who is related as a father, mother, son, daughter, brother, sister, husband or wife.

1.33 SECRETARY. "Secretary" means the Secretary of the Interior or his designee.

1.34 SESSION. "Session" means a series of bingo games conducted during which time the purchaser of a set of bingo cards is an eligible participant, including any series of single card bingo games, commonly referred to as "Mini-bingo", conducted at intermission and immediately preceding or following the Session.

1.35 SITE. "Site" shall mean that tract of land within the external boundaries of the St. Regis Mohawk Reservation upon which the Facility will be located, the location of which is set forth on Exhibit "C" attached hereto.

1.36 SUBCONTRACT. "Subcontract" means any contractual arrangement between MANAGER and a third party wherein the third party is to provide non-gaming services related to the operation of the Tribal Gaming Operation.

1.37 TRIBAL GAMING COMMISSION. "Tribal Gaming Commission" means the commission established by TRIBE pursuant to the Ordinance to regulate Class II and Class III Gaming within the jurisdiction of TRIBE.

1.38 TRIBAL GAMING OPERATION. "Tribal Gaming Operation" means the Class II and Class III gaming enterprise, including without limitation Concessions and any and all gaming and non-gaming related activities, which will be owned by TRIBE and operated by MANAGER pursuant to the terms and conditions of this Agreement.

SECTION 2. PARTIES

2.1 TRIBE. TRIBE is THE ST. REGIS MOHAWK TRIBE, a federally recognized Indian tribe, in its capacity as a sovereign government and as a proprietor. TRIBE, in the exercise of its governmental powers, authorizes and regulates Class II and Class III Gaming in accordance with the Ordinance, Compact and IGRA.

2.2 MANAGER. MANAGER is PRESIDENT R.C.–ST. REGIS MANAGEMENT COMPANY, a New York Partnership.

2.3 SOLE PROPRIETARY INTEREST BY TRIBE. TRIBE shall have sole proprietary interest and responsibility for conduct of any gaming activity. Regardless of the fact that the terms for disbursement of profits are on a percentage basis, TRIBE and MANAGER are not in partnership.

2.4 COMMUNICATIONS BETWEEN PARTIES. The parties hereto agree that full and frequent communications between MANAGER and TRIBE are essential to the proper operation of the Tribal Gaming Operation. Therefore, MANAGER and the Executive Director shall meet as often as is necessary, but not less frequently than monthly during the term of this Agreement, to discuss matters of mutual concern and interest. MANAGER shall communicate with TRIBE exclusively through the Executive Director in order to facilitate operations hereunder and avoid the appearance of any interference in TRIBE'S government or affairs, with the following exceptions:

(A) when TRIBE and/or the Tribal Gaming Commission requests in writing such communications in order to perform its functions as set forth by the Ordinance or Compact;

(B) when communications by attorneys for the Tribal Gaming Operation, TRIBE and MANAGER are necessary;

(C) when TRIBE authorizes communications with another agent of TRIBE; or

(D) when TRIBE and/or the Tribal Gaming Commission requests in writing that a principal or an agent of MANAGER report directly to TRIBE and/or the Tribal Gaming Commission or appear before TRIBE and/or the Tribal Gaming Commission for a specified purpose.

2.5 TRIBAL APPROVAL. Any approval, consent or authorization of TRIBE required by any term or condition of this Agreement herein shall be accomplished by either of the following two methods:

(A) delivery to MANAGER of a resolution or other action duly enacted by TRIBE under its Constitution setting forth the terms of such approval or authorization; or

(B) delivery to MANAGER of a written approval signed by a person to whom TRIBE under its Constitution has delegated such approval authority, along with the resolution or other action of TRIBE under its Constitution authorizing such delegation.

2.6 PRIOR AGREEMENTS BETWEEN THE PARTIES. This Agreement is entered into pursuant to that certain Memorandum of Understanding, dated August 5, 1993, by and between TRIBE and MANAGER (the "Memorandum of Understanding"), and shall supersede (i) the Memorandum of Understanding, (ii) that certain Management Agreement dated October 26, 1993, between TRIBE and MANAGER, and (iii) that certain Addendum to Management Agreement dated December 15, 1993, between TRIBE and MANAGER, upon the Effective Date of this Agreement.

SECTION 3. PURPOSE; COVENANTS AND AGREEMENTS OF TRIBE

3.1 OPERATION OF CLASS II AND CLASS III TRIBAL GAMING OPERATION; SITE. The purpose of this Agreement is to provide for the management and operation of a Class II and Class III tribal gaming operation, known as "St. Regis–President Casino," or such other name as may be agreed to in writing by MANAGER and TRIBE, to be located on the Site; provided that parking and other ancillary non-gaming activities may be located on lands located near the Site. The Tribal Gaming Operation shall operate gaming solely upon the Site during the term of this Agreement. The Tribe has purchased the land constituting the Site (with the funds loaned to TRIBE by MANAGER as a Development Expense pursuant to Section 6.1(B) herein).

3.2 OPERATIONS TO COMPLY WITH FEDERAL LAW, THE ORDINANCE AND THE COMPACT. TRIBE shall, in the operation of the Tribal Gaming Operation, promote the public order, peace, safety and welfare of all persons coming within the jurisdiction of TRIBE to provide a safe and wholesome means of recreational activity in a community setting and to provide a source of revenue for the operations, programs and departments of the government of TRIBE. This Agreement shall be subject to the requirements of IGRA, the Ordinance and the Compact.

3.3 COMPACT. A Compact for Class III Gaming was executed on behalf of the State of New York by the Governor and on behalf of the TRIBE by a majority of the Tribal Council Chiefs and approved by the Secretary pursuant to 25 U.S.C. § 2710(d)(8) on December 6, 1993.

3.4 ORDINANCE. The Ordinance was approved by the Chairman of the Commission on January 21, 1994. MANAGER shall have the reasonable opportunity to review any and all licensing statutes and regulations, and any and all amendments thereto, and to provide comments to TRIBE prior to the passage thereof. TRIBE and MANAGER agree that the adoption of licensing statutes and regulations shall be at the discretion of TRIBE.

3.5 LICENSING FEE, TAXES AND IMPOSITIONS ON MANAGER. Notwithstanding any other provision contained herein, TRIBE hereby expressly covenants and agrees that any taxes, licensing or registration fees, transfer or assignment fees, or any other fees or impositions of any sort of TRIBE, the Tribal Gaming Commission, or any other tribal agency required or allowed by the Compact, Ordinance or other existing or future tribal laws or regulations (with the exception of nondiscriminatory tribal taxes on sales of cigarettes and alcohol imposed by ordinance, law or regulation) shall be satisfied solely by the payment of a one-time, five-year gaming licensing fee to TRIBE of the sum of One Million Dollars ($1,000,000) (the "Licensing Fee"). TRIBE hereby expressly covenants, agrees, represents and warrants that there shall be no other taxes, licensing or registration fees, transfer or assignment fees, or any other fees or impositions of any sort of TRIBE, the Tribal Gaming Commission, or any other tribal agency levied, charged to or imposed upon MANAGER or any enterprise, Facility, Site, Project or Operation of MANAGER (or Principals of Manager), or any vendor of MANAGER or the Tribal Gaming Operation during the five-year term of this Agreement. In consideration of the foregoing, MANAGER hereby agrees to pay the Licensing Fee upon the approval of this Agreement by the Chairman of the Commission. This sum shall not be considered either a Development Expense or an Operating Expense. The Licensing Fee shall be paid to the Clerk of TRIBE. TRIBE further agrees, represents and warrants that TRIBE, the Tribal Gaming Commission, or any other tribal agency shall not at any time prior to the valid termination of this Agreement, including without limitation the time of negotiation, construction, or operation of this Project, impose any taxes or duties upon MANAGER, the Tribal Gaming Operation, vendors to MANAGER or the Tribal Gaming Operation, the Facility, Site, Operation or Project (collectively the "Enterprise"), directly or indirectly, including any activity or action directly or indirectly related to the Enterprise. In addition, the Tribal Gaming Operation shall not be subject to any taxes or duties of TRIBE, the Tribal Gaming Commission or any other tribal agency existing as of the date of this Agreement. TRIBE, the Tribal Gaming Commission or any other tribal agency shall not, at any time, pass any law, rule, or regulation which shall adversely affect the Enterprise, directly or indirectly, including any activity or action directly or indirectly related to the Enterprise. The terms and conditions contained in this Section shall survive any termination of this Agreement.

3.6 LICENSING FEES, TAXES AND IMPOSITIONS ON EMPLOYEES. Notwithstanding any other provision contained herein, TRIBE hereby expressly covenants and agrees that any taxes, licensing or registration fees, transfer or assignment fees, or any other fees or impositions of any sort by TRIBE, the Tribal Gaming Commission, or any other tribal agency upon any officers, directors, shareholders, partners, employees, independent contractors or agents of Tribal Gaming Operation or MANAGER shall be limited to the amounts set forth, and imposed only upon the persons set forth, on the "License Fee Schedule" attached hereto as **Exhibit "B."** TRIBE agrees, represents and warrants that there shall be no other taxes, licensing or registration fees, transfer or assignment fees, or any other fees or impositions of any sort of TRIBE, the Tribal Gaming Commission, or any other tribal agency levied or imposed upon any officers, directors, shareholders, partners, employees, independent contracts or agents of Tribal Gaming Operation or MANAGER

during the term of this Agreement. Any and all fees advanced to the TRIBE or the Tribal Gaming Commission under this Section shall be paid to the Clerk of TRIBE. The terms and conditions contained in this Section shall survive any termination of this Agreement.

SECTION 4. SCOPE OF TRIBAL GAMING OPERATION

4.1 DEVELOPMENT. TRIBE and MANAGER hereby covenant and agree that the Facility shall contain approximately 76,800 square feet of space which will include gaming operations, sanitary facilities, office space, Concessions and "back-of-house" support areas as well as provide sufficient parking on or appurtenant to the Site. The costs and expenses of the Facility shall be a maximum amount of Seventeen Million Seven Hundred Fifty Thousand Dollars ($17,750,000), unless a greater amount is agreed to in writing by both MANAGER and TRIBE; provided, however, that in no event shall the Development Expenses as set forth above exceed Twenty Million Dollars ($20,000,000); and provided further that the costs and expenses of the Facility in excess of Twelve Million Dollars ($12,000,000) shall be incurred by the Tribal Gaming Operation in the sole discretion of MANAGER. The total amount of Development Expenses shall include any and all amounts loaned or advanced by MANAGER for the benefit of the Tribal Gaming Operation prior to the Effective Date of this Agreement. The Facility shall be constructed in two phases. Phase I shall consist of approximately 50,000 square feet of space to include Class III Gaming operations, sanitary facilities, office space, Concessions and "back-of-house" support areas, as well as sufficient parking on the Site and on the lands located near the Site to support such Facility. Phase II shall consist of approximately 26,800 square feet of space to include Class II gaming operations and such additional sanitary facilities, office space, Concessions, "back-of-House" support areas and parking as may be necessary. The construction of Phase II of the Facility shall be commenced on a date to be mutually agreed upon by TRIBE and MANAGER.

4.2 RESERVED

4.3 FUTURE COMPACTS; GAMING ACTIVITIES. In the event that TRIBE and the State of New York enter into any amendments of or modifications of any sort to the Compact, or any other compact or agreement permitting the operation of any additional gaming activities not included in the Compact (including without limitation slot machines and electronic gaming devices) on lands subject to the jurisdiction of TRIBE, then MANAGER shall have the right to develop, operate and maintain such gaming activities at the Facility operated by the Tribal Gaming Operation pursuant to the terms and conditions of this Agreement, and the Ordinance and Compact then in effect.

SECTION 5. MANAGER'S TERM AND SCOPE OF AUTHORITY

5.1 TERM. TRIBE hereby retains and engages MANAGER for a term of five (5) years commencing on the date the Tribal Gaming Operation is open for business to the public, to manage, administer and operate all Class II and/or Class III Gaming of the Tribal Gaming Operation. TRIBE and MANAGER shall jointly certify in writing the date the Tribal Gaming Operation is open for business, and such writing shall by reference become a part of this Agreement.

5.2 EXPIRATION OF TERM. Nine months prior to the expiration of the term of this Agreement, TRIBE shall provide MANAGER with written notice as to whether TRIBE plans to

assume full or partial management responsibility over the Tribal Gaming Operation utilizing a salaried manager, or whether TRIBE plans to contract for the management of the Tribal Gaming Operation, with MANAGER to receive a percentage of the Gaming Net Revenues and/or the Non-Gaming Net Revenues. If TRIBE plans to contract for full or partial management of the Tribal Gaming Operation on the basis of a percentage of the Gaming Net Revenues and/or the Non-Gaming Net Revenues, MANAGER shall have the right, but not the obligation, to submit its proposal to TRIBE.

5.3 MANAGER'S RESPONSIBILITIES. All of the day-to-day operations of the Tribal Gaming Operation shall be under the exclusive control of MANAGER, subject to all requirements of IGRA, the Ordinance and the Compact. TRIBE hereby grants and delegates to MANAGER the necessary power and authority to act in order to fulfill its responsibilities pursuant to this Agreement, including the authority to construct, manage, administer, operate, maintain and improve the gaming facilities for the conduct of Class II and Class III Gaming on the Site, as well as such other activities as are reasonably related thereto. MANAGER hereby accepts such obligations. MANAGER is hereby assigned the specific responsibility to establish operating days and hours and shall have the right to operate the Tribal Gaming Operation on the Site twenty-four (24) hours per day on every day of the year. MANAGER shall use reasonable measures for the orderly management and operation of the Tribal Gaming Operation, including cleaning, and such repair and maintenance work as is necessary; provided that all maintenance expenses shall be in accordance with MANAGER'S annual operating budget. As a further description of MANAGER'S duties and obligations hereunder and not in limitation of the same, MANAGER shall have the duty and responsibility to:

(A) collect, receive, and receipt, for all gross sales, revenues, and/or rentals that become due and payable and collected in connection with and/or arising from the operation and management of the Tribal Gaming Operation, and shall deduct from such gross amounts expenses hereinafter provided; and,

(B) subject to the budget provisions of Section 8.1 and 8.2 hereof, pay all sums that MANAGER deems necessary or proper for the maintenance and operation of the building and facilities, including water, insurance, heat, light, payrolls, repairs, and the like; pay all charges which become due and payable on Tribal Gaming Operation pursuant to the terms and conditions of this Agreement, or as may be determined by MANAGER; and pay such amounts as may be necessary or appropriate for Capital Items to the Tribal Gaming Operation pursuant to this Agreement.

SECTION 6. LAND CONSTRUCTION, FINANCING AND USE OF GAMING FACILITY

6.1 LAND, INITIAL CAPITAL FOR CONSTRUCTION AND INITIAL EXPENSES.

(A) Real Property Ownership. TRIBE represents that it is the legal owner of the land comprising the Site. TRIBE shall fully cooperate in obtaining all permits and approvals needed to construct the gaming facilities on the Site and to operate the gaming

activities thereon. TRIBE represents and warrants that the Site is "Indian land" within the meaning of 25 U.S.C. § 2703(4). Gaming activities shall be conducted solely upon the Site. Parking and ancillary non-gaming activities may be located on lands located near the Site.

(B) Development Expenses. MANAGER shall provide the initial capital for all development costs and expenses under this Agreement. The "Development Expenses" under this Agreement shall include the following costs and expenses:

(1) Five Hundred Thousand Dollars ($500,000) to be used for:

(a) the purchase of the Site, which in MANAGER'S sole discretion, shall be of such a size and location as to be suitable as the site for the Tribal Gaming Operation; and

(b) miscellaneous advances of funds by MANAGER to or for the benefit of TRIBE, which in the reasonably exercised discretion of the TRIBE and MANAGER will further the Tribal Gaming Operation, including without limitation attorneys' and lobbyists' fees and expenses, as deemed reasonable and proper by TRIBE and MANAGER, incurred in TRIBE'S efforts to consummate a gaming compact between TRIBE and the State of New York for Class III Gaming, to negotiate the Memorandum of Understanding and this Agreement between TRIBE and MANAGER, and to obtain approval of this Agreement from the Commission and/or each other regulatory body from which such approval is required in order to insure the enforceability of this Agreement;

(2) for the construction and development of the Facility, including the buildings, furniture and furnishings, initial supplies, landscaping and for the purchase and construction of parking areas located on or appurtenant to the Site;

(3) for the acquisition of equipment and inventory, including initial consumable supplies, tools, gaming equipment, maintenance items and other support items coincidental to the gaming operations and management thereof located on the Site;

(4) the pre-opening expenses of the Tribal Gaming Operation, including without limitation pre-opening payroll, advertising, training, temporary rentals, travel and related expenses;

(5) initial deposit in the Daily Expense Account in the amount of Two Hundred Fifty Thousand Dollars ($250,000);

(6) attorneys' and lobbyists' fees and expenses, as deemed reasonable and proper by TRIBE and MANAGER, incurred by or on behalf of TRIBE and MANAGER in the negotiation of the Memorandum of Understanding and this Agreement between TRIBE and MANAGER and to obtain approval of this

Agreement from the Commission and each other regulatory body from which such approval is required in order to ensure the enforceability of this Agreement.

The Development Expenses, as set forth above, shall not exceed Seventeen Million Seven Hundred Fifty Thousand Dollars ($17,750,000), without the prior written approval of both TRIBE and MANAGER; provided, however, that in no event shall the Development Expenses as set forth above exceed Twenty Million Dollars ($20,000,000); and provided further that the Development Expenses in excess of Twelve Million Dollars ($12,000,000) shall be incurred by the Tribal Gaming Operation in the sole discretion of MANAGER. The total amount of Development Expenses shall include any and all amounts loaned or advanced by MANAGER for the benefit of the Tribal Gaming Operation prior to the Effective Date of this Agreement. TRIBE and MANAGER acknowledge that through April 17, 1997, the total amount of Development Expenses, including any and all amounts loaned or advanced by MANAGER for the benefit of the Tribal Gaming Operation prior to the Effective Date of this Agreement, is Four Million One Hundred Fortysix Thousand Three Hundred One and 12/100 ($4,146,301.12) Dollars. MANAGER shall have no right to or claim for reimbursement by TRIBE of any other funds expended for the benefit of the Tribal Gaming Operation prior to April 17, 1997.

The aggregate amount of Development Expenses shall constitute a loan from MANAGER to TRIBE, reimbursable to MANAGER, with interest thereafter accruing on the principal amount thereof beginning when advanced (but in no event prior to the Effective Date) at a rate equal to the prime rate of Citibank plus five percent (5%). Such rate shall be a fixed rate and shall be determined on the Effective Date. If and only if the total amount of Development Expenses is repaid by TRIBE to MANAGER within one (1) year from the date the Tribal Gaming Operation is open for business to the public, a rate equal to the prime rate of Citibank plus one percent (1%) shall apply. In such event, MANAGER shall rebate to TRIBE interest collected during such period that is in excess of Citibank prime plus one percent (1%).

The Development Expenses shall be paid as provided in Section 8.10(C), subsequent to the split of the Gaming Net Revenues and Non-Gaming Net Revenues as provided in Section 8.10(D) herein.

(C) Route 37 Access Property. Within three (3) days of the Effective Date of this Agreement, MANAGER shall either sell, or shall cause 100 Lindbergh Boulevard Corp., a New York corporation which is related to MANAGER ("LINDBERGH"), to sell to TRIBE, and TRIBE shall buy, pursuant to the terms and conditions herein, the real property located in the Town of Bombay, County of Franklin, State of New York, legally described as:

Lot No. 12 and a portion of 15 of the St. Regis Reservation Purchase of 1824 and bounded and described as follows:

Beginning at an iron rerod set in the northerly boundary of NYS Route No. 37 at the southwesterly corner of Tarek Tatlock (Liber 574 Page 70) and the southeasterly corner of Charles C. Bowers (Liber 505 Page 606), thence North 68 degrees 30 minutes 20 seconds West, 1104.61 feet along the northerly boundary of said road to an iron rerod set, said point being the southwesterly corner of said Bowers and the southeasterly corner of William Baba (Liber 470 Page 425);

thence North 39 degrees 16 minutes 50 seconds East, 1319.51 feet along a fence line along the easterly line of Baba and the westerly line of Bowers to an iron rerod set in a fence line in the southerly line of James B. Cook (Lot 448), said point being in the northerly line of Town of Bombay and the southerly line of the St. Regis Indian Reservation, said point being the northwesterly corner of Bowers and the northeasterly corner of Baba;

thence South 50 degrees 21 minutes 03 seconds East, 819.23 feet along said fence line to an iron rerod found at the northeasterly corner of said Bowers and the northwesterly corner of Tatlock;

thence South 25 degrees 53 minutes 12 seconds West, 1004.13 feet along a fence line along the easterly line of Bowers and the westerly line of Tatlock to the point of beginning;

Containing 25.102 acres of land as surveyed by Haynes and Smith Associates, Professional Land Surveyors, during November of 1993.

Being the same premises conveyed to Charles C. Bowers by Linda Bowers in a deed dated November 17, 1981 and recorded in the Franklin County Clerk's Office in Liber 505 of Deeds at Page 606.

Also being a portion of the premises conveyed to Charles C. Bowers by Linda Bowers in a deed dated November 17, 1981 and recorded in the Franklin County Clerk's Office in Liber 505 of Deeds at Page 608;

Being and intended to be the same property as "Parcel II" conveyed to 100 Lindbergh Boulevard Corp. by Charles C. Bowers by deed dated December 30, 1993, and recorded in the Franklin County Clerk's Office in Book 605 of Book of Deeds at Page 17, on January 7, 1994.

Excepting and reserving New York Telephone Easements Liber 380 Page 234, Liber 380, Page 242.

Excepting and reserving Niagara Mohawk Easement Liber 397 Page 595.

Together with and subject to any easements, exceptions, rights, privileges, obligations and conditions of record.

(the "**Route 37 Access Property**").

(1) Terms of Sale. MANAGER shall transfer, or shall cause LINDBERGH to transfer, title to the Route 37 Access Property to TRIBE by deed within three (3) days after the approval of this Agreement by the Commission. The Purchase Price for the Route 37 Access Property shall be One Hundred Sixty-five Thousand Dollars ($165,000.00), which includes the purchase price paid by LINDBERGH and all costs related to obtaining, improving and maintaining the land until transfer to TRIBE. In addition, TRIBE shall pay all closing costs, recording fees, revenue stamps, taxes, insurance, attorney's fees and any other costs related to this land sale transaction. TRIBE and MANAGER agree that the Purchase Price, plus all such costs and expenses and those set forth in Section 6.1(C)(4) below, shall be considered to be a Development Expense pursuant to Section 6.1(B) herein and shall be made a part of the loan from MANAGER to TRIBE for the Development Expenses. The purchase price of the Route 37 Access Property, plus the costs and expenses set forth above and those set forth in Section 6.1(C)(4) below, shall be repaid as part of the loan for Development Expenses from MANAGER to TRIBE as provided in Section 6.1(B)(i) and (ii) and Section 8.10(C) herein. TRIBE and MANAGER agree that the purchase price and such costs and expenses will only be paid out of TRIBE's share of the Gaming Net Revenues and Non-Gaming Net Revenues as provided in Section 8.10(c) herein or pursuant to the Tribal Buyout Option in Section 4.3 herein and that TRIBE has no other obligations for the payment of the purchase price of the Route 37 Access Property.

(2) Conveyance. MANAGER shall convey, or shall cause LINDBERGH to convey fee simple title to the Route 37 Access Property by deed in the form of **Exhibit "D"** attached hereto and made a part hereof in recordable form, and which shall contain the same exceptions and reservations in the Warranty Deed conveying the Route 37 Access Property from Charles C. Bowers to LINDBERGH recorded in the Franklin County Clerk's Office in Book of Deeds, Book 605, at Page 17 on January 7, 1994, a copy of which is attached and incorporated herewith as **Exhibit "E."**

(3) Condition of Property; LINDBERGH's Representations and Warranties. TRIBE EXPRESSLY AGREES THAT, TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE ROUTE 37 ACCESS PROPERTY IS CONVEYED "AS IS", "WHERE IS", AND WITH "ALL FAULTS," WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, HABITABILITY OR SUITABILITY FOR ANY PURPOSE, EXPRESS OR IMPLIED. TRIBE ACKNOWLEDGES THAT MANAGER AND LINDBERGH HAVE NOT MADE AND DO NOT MAKE ANY REPRESENTATIONS AS TO

THE PHYSICAL CONDITION, OR ANY OTHER MATTER AFFECTING OR RELATING TO THE ROUTE 37 ACCESS PROPERTY. MANAGER AND LINDBERGH EXPRESSLY DISCLAIM, AND TRIBE ACKNOWLEDGES AND ACCEPTS, THAT LINDBERGH AND MANAGER HAVE DISCLAIMED ANY AND ALL REPRESENTATIONS, WARRANTIES OR GUARANTIES OF ANY KIND, ORAL OR WRITTEN, EXPRESS OR IMPLIED, CONCERNING THE ROUTE 37 ACCESS PROPERTY, INCLUDING, WITHOUT LIMITATION (I) THE VALUE, CONDITION, MERCHANTABILITY, MARKETABILITY, PROFITABILITY; SUITABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE OF THE ROUTE 37 ACCESS PROPERTY, (II) THE MANNER OR QUALITY OF THE CONSTRUCTION OR MATERIALS INCORPORATED INTO ANY OF THE ROUTE 37 ACCESS PROPERTY, (III) THE MANNER, QUALITY, STATE OF REPAIR OR LACK OF REPAIR OF THE ROUTE 37 ACCESS PROPERTY, AND (IV) THE COMPLIANCE OF THE ROUTE 37 ACCESS PROPERTY WITH REGULATIONS OR LAWS PERTAINING TO HEALTH, THE ENVIRONMENT, OR GOVERNMENTAL CODES OR REGULATIONS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, FROM THE DATE OF THE CONVEYANCE, TRIBE ASSUMES ALL RISK, LIABILITY, CLAIMS, DAMAGES AND COSTS, AND AGREES THAT MANAGER AND LINDBERGH SHALL NOT BE LIABLE FOR ANY SPECIAL, DIRECT, INDIRECT, CONSEQUENTIAL OR OTHER DAMAGES, RESULTING OR ARISING FROM OR RELATED TO THE OWNERSHIP, USE, LOCATION, MAINTENANCE, REPAIR OR OPERATION OF THE ROUTE 37 ACCESS PROPERTY FROM THE DATE OF CLOSING. TRIBE ACKNOWLEDGES THAT MANAGER AND LINDBERGH HAVE NOT MADE ANY REPRESENTATIONS, ARE UNWILLING TO MAKE ANY REPRESENTATIONS, AND HAVE HELD OUT NO INDUCEMENTS TO TRIBE. MANAGER AND LINDBERGH MAKE ABSOLUTELY NO REPRESENTATION OR WARRANTY OF ANY KIND OR CHARACTER WITH RESPECT TO THE ENVIRONMENTAL CONDITIONS OF THE ROUTE 37 ACCESS PROPERTY.

(4) Closing. Closing shall be at a time and a place agreed to by TRIBE and MANAGER, but within three (3) days of the Effective Date. TRIBE shall pay all general real property ad valorem taxes and special assessments to date of closing, all closing costs, filing fees, attorneys fees, and any other costs related to the sale. Such costs and expenses shall be a "Development Expense" as set forth in Section 6.1(C) (1) above.

(5) Real Estate Brokers and Commissions. TRIBE and MANAGER represent and warrant to the other that it has not engaged or dealt with and there are no commissions, finder's fees, or other monies due or to become due to any real estate brokers, agents, representatives, finders, or sales persons concerning the Route 37 Access Property or this transaction. TRIBE and MANAGER shall indemnify, defend, and hold the others harmless from and against any and all claims, losses, costs (including, without limitation, reasonable attorneys' fees and court costs) resulting from any claim for any commission, finder's fees, or other monies by any

broker, agent, finder, or salesperson, in connection with this transaction, as a result of a breach of the representations and warranties set out in this section.

Subject to the Force Majeure provisions of Section 10.9, any breach by MANAGER of the provisions of this Section 6.1(c) shall render this Agreement void and unenforceable.

6.2 CONSTRUCTION OF FACILITIES. TRIBE hereby grants MANAGER the authority to supervise the construction of all the development, improvements, and related activities with regard to the Tribal Gaming Operation as set forth below:

(A) Facility. Within thirty (30) days after the Effective Date, MANAGER shall undertake all preliminary steps necessary to construct the Facility, including selection of an architect and selection of a general contractor. The Facility shall contain approximately 76,800 square feet of space to include gaming operations, sanitary facilities, office space and Concessions and back-of-house support areas, as well as provide sufficient parking on the Site and on lands located near the Site. The Facility shall be constructed in two phases. Phase I shall consist of approximately 50,000 square feet of space to include Class III Gaming operations, sanitary facilities, office space, Concessions and "back-of house" support areas, as well as sufficient parking on the Site and on the lands located near the Site to support such Facility. Phase II shall consist of approximately 26,800 square feet of space to include Class II Gaming operations and such additional sanitary facilities, office space, Concessions, "back-of house" support areas and parking as may be necessary . The construction of Phase II of the Facility shall be commenced on a date to be mutually agreed upon by TRIBE and MANAGER.

(B) Standards. The design, construction and maintenance of the Facility and Site shall meet or exceed the minimum standards set by the TRIBE'S building code or the Compact or which would be imposed on such facility by existing state or federal statutes or regulations which would be applicable if such facilities were located outside of the territorial boundaries of TRIBE, although those requirements would not otherwise apply within TRIBE'S territorial boundaries; provided further, that nothing in this Section shall grant any jurisdiction over the Site or its development and management to the State of New York, or any political subdivision thereof.

(C) National Environmental Policy Act. If applicable, MANAGER will supply the Commission with all information necessary for the Commission to comply with the regulations of the Commission issued pursuant to the National Environmental Policy Act.

6.3 ARCHITECT. The architect shall be chosen by MANAGER and shall be approved by TRIBE, such approval not to be unreasonably withheld. At the direction of MANAGER, the architect shall have the responsibility to design the Facility, with such design to be subject to the approval of TRIBE, which approval shall not be unreasonably withheld. Further, at the direction of MANAGER, the architect shall supervise the completion of all the construction, development, improvements and related activities undertaken pursuant to the terms and conditions of the contract with the general contractor as described below.

6.4 GENERAL CONTRACTOR. The general contractor shall be responsible for providing all materials, equipment and labor to construct and initially equip the Facility, as necessary, including site development, and shall supervise the construction of such facilities. The allowable costs and compensation of the general contractor shall be on terms and in an amount to be negotiated by MANAGER, said terms and amount to be approved by TRIBE. MANAGER'S contract with the general contractor shall provide as follows: (i) construction of the Facility shall commence within ninety (90) days following the Effective Date; (ii) the general contractor shall exert his best efforts to complete construction within six (6) months of the commencement of construction; (iii) the general contractor shall warrant the construction to be free of defects and unworkmanlike labor for a period of one year subsequent to the date the architect certifies the facility is complete. MANAGER'S contract with the general contractor shall contain such other provisions for the protection of the parties to this Agreement as deemed appropriate by MANAGER. Preference in employment of qualified persons by the general contractor shall be extended in the following order of priority: First, members of TRIBE; second, children and spouses of members of TRIBE; and third, members of the Canadian St. Regis Mohawk Indian Tribe.

6.5 SUPERVISION OF CONSTRUCTION. TRIBE may employ an inspector to observe the construction of the Facility, and MANAGER shall allow the inspector full access to the construction site and shall allow the inspector to inspect all construction materials and financial records relating to construction costs. Any and all reasonable costs of TRIBE'S supervision of the general contractor shall be a Development Expense.

6.6 NO LIENS. MANAGER shall keep the Facility and the Site free and clear of all mechanics' and other liens resulting from the construction of the Facility, which shall at all times remain the property of TRIBE. If such lien is claimed or filed, it shall be the duty of MANAGER, within thirty (30) days after having been given written notice of such a claim having been filed, to cause the property to be discharged from such claim, either by payment to the claimant, or by the posting of a bond, and the payment into court of the amount necessary to relieve and discharge the premises from such claim, or in any other manner which will result in the discharge of such claim.

6.7 FIRE AND SAFETY. MANAGER is hereby assigned the specific responsibility to provide fire protection services. The Facility shall be constructed and maintained in compliance with all fire and safety statutes, ordinances, and regulations which would be applicable if the Facility were located outside the exterior boundaries of the territory of TRIBE, although those requirements would not otherwise apply on that territory; provided, that nothing in this Section shall grant any jurisdiction to the State of New York or any political subdivision thereof over the Tribal Gaming Operation site. Further, the construction and maintenance shall be in compliance with and subject to the standards set forth in Section 12.A. of the Compact.

6.8 OWNERSHIP OF PROPERTY. Title to the Site and the Facility, as well as furniture, fixtures and equipment acquired pursuant to Section 6.1 herein or purchased as an Operating Expense of the Tribal Gaming Operation shall vest solely in TRIBE. Notwithstanding the preceding sentence, TRIBE and MANAGER acknowledge that the furniture and/or equipment may be leased from third parties and that amounts paid under such leasing documents shall be an Operating Expense of the Tribal Gaming Operation. In such event , title to the furniture and/or equipment shall be determined according to the provisions of the leasing documents.

Prior to opening of the Facility, a complete physical inventory of all separate property of TRIBE and MANAGER shall be taken by both parties and initial acceptance and approval shall be given by both parties. All property acquired after the opening of the Facility shall be recorded on the respective inventory records of each party when acquired. An annual inventory shall be conducted for all property located on the premises of the Facility. Any furniture, fixtures or equipment purchased by MANAGER which are not purchased as part of the initial capital expenses described in Section 6.1 herein, which are not included in the Development Expenses, Capital Items or Operating Expenses, and which are not permanently affixed to the Facility shall be the property of MANAGER and shall be removable by MANAGER upon expiration or termination of this Agreement, provided that at no time during the term of this Agreement shall MANAGER charge TRIBE for use of any property owned solely by MANAGER.

6.9 USE OF FACILITY. MANAGER shall not conduct or allow to be conducted at the Facility any illegal activities or any activities not allowed by TRIBE under the Ordinance or the Compact, including the use or possession of illegal drugs or other substances or firearms. MANAGER shall maintain an orderly, clean, and healthy atmosphere.

6.10 NON-INTERFERENCE WITH MANAGER'S USE. During the term of this Agreement, TRIBE covenants and agrees that any amendments to the Ordinance shall be a legitimate effort to ensure that Gaming is conducted in a manner that adequately protects the environment, the public health and safety, and the integrity of the Tribal Gaming Operation. TRIBE covenants and agrees that it shall not adopt any amendments to the Ordinance, or revoke or modify the Ordinance in any manner, which will prejudice MANAGER'S rights under this Agreement or any amendments hereof. TRIBE further covenants and agrees not to enact any laws or regulations of any sort which would make MANAGER'S operations authorized in this Agreement herein illegal, and agrees not to enact any laws or regulations of any sort or take any other action which would unduly interfere with, obstruct, prevent, delay or otherwise impede MANAGER from conducting its operation and management duties under this Agreement. During the term of this Agreement, TRIBE agrees that MANAGER shall have lawful access to the Site at all times.

SECTION 7. GENERAL OPERATIONS

7.1 PERSONNEL AND TRAINING. MANAGER is hereby assigned the specific responsibility to establish and administer employment practices. Further, TRIBE and MANAGER hereto covenant and agree that MANAGER shall have the responsibility on behalf of TRIBE, to employ (but shall not perform employee background checks referred to in (C) below), direct, control, and discharge all personnel performing regular services in or on the Site in connection with the construction, administration, maintenance, operation and management of the Tribal Gaming Operation, and any activity connected with the Tribal Gaming Operation, as follows:

(A) General Manager. MANAGER shall select a General Manager who shall be an employee of the Tribal Gaming Operation, and his salary shall be an Operating Expense. The annual base salary of the General Manager shall be not in excess of One Hundred and Fifty Thousand Dollars ($150,000). The General Manager must be licensed by TRIBE pursuant to the Ordinance. All licensing issues involving the General Manager

shall be decided by the Tribal Gaming Commission pursuant to the Ordinance. All non-licensing employment issues and disputes shall be resolved pursuant to Section 10.8 hereof.

(B) General Hiring Authority. All employees shall be employees of the Tribal Gaming Operation and shall be listed under the Tribal Gaming Operation's federal employee identification number. It is hereby understood and agreed that MANAGER shall have the responsibility, on behalf of the Tribal Gaming Operation, to employ, direct, control and discharge all personnel performing regular services in and on the Site in connection with maintenance, operation, and management of the Tribal Gaming Operation, subject to the requirements of IGRA and the Compact. MANAGER shall indemnify and hold TRIBE harmless from any and all liability associated with the payment of federal and state withholding taxes for employees of the Tribal Gaming Operation.

(C) Employee Background Checks. Background checks shall be conducted by TRIBE on each employee and job applicant pursuant to the terms of IGRA, the Ordinance and the Compact. If feasible, such check shall be conducted in advance of employment. Nonetheless, nothing herein shall prevent the hiring of a qualified applicant under a temporary license as provided in the Compact at Section 5 pending such background check if immediate personnel requirements demand the same. MANAGER shall cooperate with TRIBE to expedite such checks.

(D) Hiring Preference; Reports. Preference in employment of qualified persons shall be extended in the following order of priority: First, members of TRIBE; second, children and spouses of members of TRIBE; and third, members of the Canadian St. Regis Mohawk Indian Tribe; provided, that in no instance shall an Elected Official of TRIBE be hired or otherwise employed by MANAGER as an employee of the Tribal Gaming Operation. MANAGER shall provide the Tribal Gaming Commission annually, commencing with the first anniversary date of this Agreement, with a report showing the following information for the preceding twelve month period: total number of employees who worked that year, number of employees in each of the preference categories who worked that year, number of employees in the preference categories who worked in middle or upper management, number of employees hired that year, number of employees in each of the preference categories hired that year.

(E) Employee Recruitment Plan. Throughout the term of this Agreement, MANAGER shall make active efforts to recruit, train and employ members of TRIBE, their spouses and their children, and to place such persons into middle and upper level management positions, provided that such recruitment efforts and training shall be a Development Expense, if incurred prior to the commencement of Gaming under this Agreement, and an Operating Expense, if incurred subsequent to the commencement of Gaming. MANAGER shall develop and present a written plan for recruitment to TRIBE and the Tribal Gaming Commission. Such recruitment plan shall require MANAGER to make continuing active efforts to recruit, train and employ members of TRIBE, their spouses and their children during the entire term of this Agreement.

(F) Recruitment Training. As a recruitment measure, MANAGER shall ensure that the Tribal Gaming Operation is provided with employee training sessions for members of TRIBE, their children and their spouses prior to the commencement of Gaming operations and shall note such training on the trainees' applications for employment. MANAGER shall notify TRIBE in advance of all employee training to be given after commencement of operations by the Tribal Gaming Operation, and shall permit any member of TRIBE, his spouse or his children who desires (but who is not ineligible for employment pursuant to Section 7.1(D) herein) employment at the Tribal Gaming Operation to attend employee training and to have the same noted on his employment application. All training required herein shall be a Development Expense, if incurred prior to the commencement of Gaming under this Agreement, and an Operating Expense, if incurred subsequent to the commencement of Gaming; provided that TRIBE shall make reasonable efforts to provide to the Tribal Gaming Operation any job training services or job training funding which it may have available for use in recruitment and training of Tribal Gaming Operation employees.

(G) Employee Training. MANAGER shall ensure that the Tribal Gaming Operation is provided with initial training and periodic regular training for all Tribal Gaming Operation employees in compliance with the Compact. All training required herein shall be a Development Expense, if incurred prior to the commencement of Gaming under this Agreement, and an Operating Expense, if incurred subsequent to the commencement of Gaming; provided that TRIBE shall make reasonable efforts to provide to the Tribal Gaming Operation any job training services or job training funding which it may have available for use in recruitment and training of Tribal Gaming Operation employees. A three-year training plan shall be developed by MANAGER to ensure proper training of the employees of the Tribal Gaming Operation for all levels of personnel and management. During the fourth year of the term of this Agreement, all positions within the Tribal Gaming Operation shall be filled by members of TRIBE, if qualified, licensed tribal member applicants are available.

(H) Bonds for Employees in Positions of Trust. MANAGER may, from time to time, designate as positions of trust certain Tribal Gaming Operation personnel positions. Upon MANAGER'S designation of a personnel position as one of trust, MANAGER shall require the person holding such position to obtain a bond to assure the trust. The nature and amount of such bond shall be within the discretion of MANAGER and may, from time to time, be changed in nature and/or amount. The cost of such bonds shall be an Operating Expense.

(I) Hiring Preference--Vendors. All vendors to the Tribal Gaming Operation shall be selected by MANAGER through a process of competitive bids. TRIBE and members of TRIBE, if otherwise qualified and licensed, shall be given a preference over non-members of TRIBE when their bids are equal to or within five percent (5%) of the bids of non-members; provided that in no instance shall an Elected Official of TRIBE be selected or used by MANAGER as a vendor to the Tribal Gaming Operation. All bid selections and procurement policies shall be made and established by MANAGER, subject to the final approval of TRIBE, which approval shall not be unreasonably withheld.

7.2 INTERFERENCE IN TRIBAL AFFAIRS. MANAGER, including any partner, employee or agent of MANAGER, whether or not members of TRIBE, shall not, directly or indirectly, attempt to or unduly interfere with, become involved in, or attempt to influence the internal affairs of TRIBE, its members or its government, including but not be limited to any attempt to influence the tribal election process, offer cash incentives, or make written or oral threats to the personal or financial status of any person, entity, or thing. Nothing contained herein shall be construed as preventing MANAGER from meeting with TRIBE, TRIBE's officials or TRIBE'S representatives with regard to the normal performance of MANAGER'S rights, duties and obligations as allowed or contemplated by this Agreement.

7.3 SECURITY. Pursuant to the requirements of Section 11 of the Compact, and the plan for safety and security to be developed thereunder, MANAGER shall be responsible for hiring and supervising a security force consisting of security officers sufficient to reasonably assure the safety of the customers, personnel, monies and property of the Tribal Gaming Operation. The costs of the security force hired and supervised by MANAGER for the benefit of the Tribal Gaming Operation shall be an Operating Expense. Such security officers shall be employees of the Tribal Gaming Operation and shall report directly to the General Manager. MANAGER shall have exclusive responsibility for the employment of the security officers. The security personnel shall cooperate with law enforcement officers of TRIBE and the State of New York, and shall coordinate their activities with said officers when feasible. The costs of the state law enforcement officers, who are located on the Site to provide additional security to the Tribal Gaming Operation as provided in Section 4 of the Compact, shall be an Operating Expense; provided, however, that as tribal law enforcement officers undertake and assume the duties of and replace such state officers under the provisions of Section 4(f) of the Compact, the costs of such tribal law enforcement officers, who shall be located on the Site, shall become an Operating Expense. Further, the pro rata costs attributable to the Tribal Gaming Operation of the administrative expenses of the State of New York which are assessed to the Tribe under Sections 4 and 9 of the Compact shall also be an Operating Expense. The pro rata costs of the salaries and overhead of the Tribal Gaming Commission directly associated with oversight of the Tribal Gaming Operation by the Tribal Gaming Commission under this Agreement shall be an Operating Expense. Other tribal gaming ventures shall also bear their pro rata share of such costs. The parties hereto hereby agree that the foregoing costs and expenses are all of the costs and expenses for security which are attributable to the Tribal Gaming Operation. All other costs and expenses for security and tribal governmental services, if any, including without limitation (i) the costs of any additional tribal law enforcement agency and/or officers or (ii) any additional public safety or other governmental services shall be neither an Operating Expense, nor a Development Expense, of the Tribal Gaming Operation, nor shall any such costs be passed on to MANAGER, directly or indirectly, but such costs and expenses, if any, are general governmental expenses of TRIBE and are covered by the Licensing Fee in lieu of taxes provided for Section 3.5 and all other payments received by TRIBE hereunder.

7.4 COOPERATION BETWEEN SECURITY PERSONNEL AND LAW ENFORCEMENT OFFICERS. Subject to Section 11 of the Compact, MANAGER and TRIBE may develop mutually agreed upon policies and procedures related to security and law enforcement to ensure that the security personnel subject to MANAGER's control as set forth in Section 7.3 herein, the law enforcement officers subject to TRIBE'S control, and the state law enforcement officers work together in a cooperative and coordinated manner.

7.5 COMPLIANCE WITH TRIBAL AND FEDERAL LAW. The parties hereto agree to conduct gaming activities pursuant to this Agreement in accordance with the Ordinance, the Compact and IGRA.

7.6 TAXES BY NON-TRIBAL GOVERNMENT. If any non-tribal government attempts to impose any possessory interest tax or other tax on either party to this Agreement regarding the Tribal Gaming Operation (with the exception of appropriate state and federal income taxes, if any, on the Management Fees, interest or other items of income to Manager), the parties shall jointly resist such attempt through legal action. The costs of such action and the compensation of legal counsel shall be an Operating Expense of the Tribal Gaming Operation. If a court of competent jurisdiction finally determines that any such tax is legal, such tax shall be an Operating Expense of the Tribal Gaming Operation.

7.7 COMMISSION FEES; SELF-REGULATION. TRIBE and MANAGER understand that Class II Gaming at the Tribal Gaming Operation is subject to a fee to be paid to the Commission pursuant to IGRA. TRIBE and MANAGER shall use their best efforts to establish regulation of the Tribal Gaming Operation by TRIBE in order that such fee is kept to a minimum. Such annual fee to the Commission shall be an Operating Expense of the Tribal Gaming Operation. The Tribal Gaming Operation's accounting procedures shall be maintained so as to allow the calculation of the Commission's annual fee.

7.8 LEGAL REPRESENTATION OF TRIBAL GAMING OPERATION. MANAGER shall select and employ an attorney to represent the Tribal Gaming Operation in the general legal affairs of the Tribal Gaming Operation, and shall select and employ such other attorneys as are necessary to represent the Tribal Gaming Operation in any specific legal matters requiring specialized legal knowledge or expertise. Said attorney or attorneys shall be subject to approval of TRIBE, which approval shall not be unreasonably withheld, and shall be employed pursuant to written agreement executed by the authorized representative of each party. All legal fees, costs and expenses incurred pursuant to such attorney employment agreements shall be an Operating Expense. Nothing contained herein shall prevent either party from engaging an attorney to represent its separate interests arising from this Agreement at each party's separate expense.

7.9 ADVERTISING. MANAGER shall have the responsibility to set a budget for advertising. MANAGER shall routinely advertise the Tribal Gaming Operation locally so that no more than two weeks at a time shall pass without some form of local advertising being placed before the public. In addition, MANAGER shall routinely advertise the Tribal Gaming Operation outside the said local area in a manner designed to increase Tribal Gaming Operation revenues. Advertising shall be considered an Operating Expense of the Tribal Gaming Operation.

7.10 DISPUTE RESOLUTION BETWEEN MANAGER AND CUSTOMERS. MANAGER shall have the responsibility to establish and implement procedures to resolve complaints received from any customer or member of the general public who is or claims to be adversely affected by any act or omission of the Tribal Gaming Operation. MANAGER shall receive and hear any such complaints and maintain complete records of any such complaint and the disposition thereof. Subsequent to the final disposition of any such complaint by the Tribal Gaming

Operation, the customer or member of the public shall have any right provided by the Ordinance to have such complaint heard by the Tribal Gaming Commission. In conjunction with such action, MANAGER shall submit to the Tribal Gaming Commission the complete record of such complaint and disposition to be utilized by the Tribal Gaming Commission in its review and disposition thereof. In addition, MANAGER shall have the right to investigate any and all complaints and correct problems, if any, identified in complaints as determined by MANAGER.

7.11 DISPUTE RESOLUTION BETWEEN MANAGER AND EMPLOYEES. MANAGER shall have the responsibility to establish and implement procedures to resolve complaints or grievances received from any employee of the Tribal Gaming Operation who is or claims to be adversely affected by any act or omission of the Manager or Tribal Gaming Operation. The provisions of the "President R.C.-St. Regis Management Company Human Resources Policy–Grievance Procedure" developed by MANAGER are attached hereto as **Exhibit "F"**. MANAGER shall receive and hear any such complaint or grievance and maintain complete records of any such complaint or grievance and the disposition thereof. Subsequent to the final disposition of any such complaint or grievance by the Tribal Gaming Operation, the employee of the Tribal Gaming Operation shall have any right provided by the Ordinance to have such complaint or grievance heard by the Tribal Gaming Commission. In conjunction with such action, MANAGER shall submit to the Tribal Gaming Commission the complete record of such complaint or grievance and the disposition thereof to be utilized by the Tribal Gaming Commission in its review and disposition thereof. In addition, MANAGER shall have the right to investigate any and all complaints or grievances and correct problems, if any, identified in such complaints or grievances as determined by MANAGER.

SECTION 8. FINANCIAL OPERATIONS

8.1 ANNUAL OPERATING BUDGET. Not less than sixty (60) days prior to commencement of operations and not less than sixty (60) days prior to each year of the term of this Agreement, MANAGER shall prepare an annual operating budget for the Tribal Gaming Operation, and shall submit said budget to the Executive Director, who shall promptly negotiate any proposed amendments with MANAGER. The Executive Director shall submit the budget to the Tribal Gaming Commission for approval. The approved annual operating budget may be amended only upon the written consent of MANAGER and TRIBE.

8.2 ANNUAL CAPITAL BUDGET. Not less than sixty (60) days prior to commencement of operations and not less than sixty (60) days prior to each year of the term of this Agreement, MANAGER shall prepare an annual capital budget for the purpose of funding Capital Items for the Tribal Gaming Operation, and shall submit said budget to the Executive Director, who shall promptly negotiate any proposed amendments with MANAGER. The Executive Director shall submit the budget to the Tribal Gaming Commission for approval. The approved annual capital budget may be amended only upon the written consent of MANAGER and TRIBE.

8.3 BANK ACCOUNTS. TRIBE and MANAGER shall select banks convenient to the location of the Facility for the deposit and maintenance of funds. All such depositories and the accounts therein shall be federally insured, and when possible, such accounts shall be interest earning. TRIBE and MANAGER shall initially establish four (4) bank accounts, one for the Tribal

Gaming Operation Revenue Account (the "Revenue Account"), one for the Tribal Gaming Operation Daily Expense Account (the "Daily Expense Account"), one for the Tribal Gaming Operation Payroll Account (the "Payroll Account") and one for the Tribal Gaming Operation Prize Account (the "Prize Account"). Each bank account shall be listed under the federal identification number for the Tribal Gaming Operation. MANAGER shall provide the Executive Director with a monthly report on all expenditures from the accounts. Said accounts shall be maintained in accordance with the following requirements:

(A) Daily Expense Account. MANAGER shall establish the Daily Expense Account within ten (10) working days following the Effective Date of this Agreement. Such account shall be listed with the bank as held in trust for TRIBE by MANAGER as agent of TRIBE. Prior to the opening date of the Tribal Gaming Operation, MANAGER shall deposit Two Hundred Fifty Thousand Dollars ($250,000) in the Daily Expense Account for initial pre-opening and development costs and expenses and make additional deposits as may be required from time to time, which shall be a Development Expense as specified in Section 6.1(B) herein. Subsequent to the opening date of the Tribal Gaming Operation, MANAGER shall periodically deposit into the Daily Expense Account from the Revenue Account an amount sufficient to cover all Operating Expenses of the Tribal Gaming Operation, including prizes. MANAGER shall, consistent with and pursuant to the approved annual budget, have responsibility and authority for making all payments for Operating Expenses from the Daily Expense Account that MANAGER deems necessary and proper. MANAGER shall promptly pay said operation bills as they come due. The signature of the General Manager or other authorized representative of MANAGER shall be required on Daily Expense Account checks.

(B) Revenue Account. MANAGER shall establish the Revenue Account no less than ten (10) working days prior to the opening date of the Tribal Gaming Operation. Payments from the Revenue Account, other than transfers by MANAGER to the Daily Expense Account, shall require two (2) signatures as follows:

(1) the signature of the Executive Director or other authorized representative of TRIBE, as designated by the Tribal Gaming Commission, and

(2) the signature of the General Manager or other duly authorized representative of MANAGER.

Distribution of the Gaming Net Revenues and the Non-Gaming Net Revenues to TRIBE and MANAGER shall be made monthly from the Revenue Account in accordance with the provisions of Section 8.9 herein.

(C) Payroll Account. MANAGER shall establish the Payroll Account within ten (10) working days following the Effective Date of this Agreement. Such account shall be listed with the bank as held in trust for TRIBE by MANAGER as agent of TRIBE. MANAGER shall periodically deposit into the Payroll Account funds from the Daily Expense Account. MANAGER shall, consistent with and pursuant to the approved annual budget, have responsibility and authority for making all necessary payments relating to

payroll, including employment taxes, from the Payroll Account. The signature of the General Manager or other authorized representative of MANAGER shall be required on Payroll Account checks.

(D) Prize Account. MANAGER shall establish the Prize Account no less than ten (10) working days prior to the opening date of the Tribal Gaming Operation. Such account shall be listed as held in trust for TRIBE by MANAGER as agent of TRIBE. MANAGER shall periodically deposit into the Prize Account from the Daily Expense Account an amount sufficient to cover payment of prizes. MANAGER shall have responsibility and authority for making all payments for prizes that MANAGER deems necessary and proper. The signature of MANAGER or other authorized representative of MANAGER shall be required on Prize Account checks. A minimum balance of One Hundred Thousand Dollars ($100,000) shall be maintained in the Prize Account at all times for payment of prizes. A check shall be written from the Prize Account for the payment of each prize in excess of Five Thousand Dollars ($5,000).

If MANAGER determines additional bank accounts are necessary for operational purposes, MANAGER may establish such accounts with the consent of the Executive Director.

8.4 PETTY CASH FUND. MANAGER is authorized to withdraw from time to time no more than Five Thousand Dollars ($5,000) per month from the Daily Expense Account for the establishment and maintenance of a petty cash fund to be used for miscellaneous small expenditures of the Tribal Gaming Operation, which shall be maintained at the Facility, provided that all petty cash funds used shall be properly receipted.

8.5 CASH BANK. MANAGER is authorized to maintain a cash bank on the Tribal Gaming Operation premises for the purposes of day-to-day operations provided that such cash bank is adequately safeguarded from theft and embezzlement.

8.6 CASH DISBURSEMENTS; COMPLIMENTARY SERVICES.

(A) Cash Disbursements. MANAGER shall not make any cash disbursements from any Tribal Gaming Operation funds for any reason whatsoever, except for payments from the petty cash fund, the redemption of gaming chips of equal value and except for the payment of cash prizes in amounts less than Five Thousand Dollars ($5,000). Any and all other payments or disbursement by MANAGER shall be made by check drawn against the Daily Expense Account, the Payroll Account or the Prize Account. MANAGER shall have the obligation to promptly file any reports of gaming winnings and the names of winners that may be required by the Internal Revenue Service of the United States.

(B) Complimentary Services. Pursuant to Section 7(c) of the Compact, the Tribal Gaming Operation shall maintain a record of all complimentary services provided to patrons of the Facility or their guests, including either the full retail price of such service or item if the same service or item is normally offered for sale to patrons in the ordinary course of business at the Facility, or the cost of the service or item to the Tribal Gaming Operation if not offered for sale to patrons in the ordinary course of business. If the complimentary

service or item is provided to a patron by a third party on behalf of the Tribal Gaming Operation, such service or item shall be recorded as an Operating Expense at the actual cost to the Tribal Gaming Operation of having the third party provide such service or item. A log recording all such complimentary serviced having a value greater than Two Hundred Dollars ($200) shall be available for inspection by the gaming agency of the State of New York in accordance with Section 11(b) and Appendix B of the Compact.

8.7 DAILY DEPOSITS TO REVENUE ACCOUNT. MANAGER shall collect, receive, and receipt all gross sales, revenues, and any other proceeds connected with or arising from the operation of the Tribal Gaming Operation, the sale of all products, food and refreshments, and all other activities on the Site, and deposit them daily into the Revenue Account maintained jointly by the parties as soon as reasonably possible after the close of business for the day. All monies received by the Tribal Gaming Operation on each day it is open for business, less any amount necessary to restore the cash bank on the premises to its required amount, must be delivered daily to a bonded courier service for deposit in the bank by the bonded courier service prior to the close of the next banking day.

8.8 DAILY REPORTS; WEEKLY REPORTS. MANAGER shall provide the Executive Director with a report following each day of gaming which contains, at a minimum, the total amount of "drop, hold and win" from the gaming operation and Concession revenue, the total amount deposited, and the total amount remaining in the cash bank. Further, within two (2) days following the previous week, MANAGER shall provide the Executive Director with a weekly report which contains, at a minimum, the same types of information set forth in the daily reports.

8.9 MONTHLY REPORT AND PAYMENT DUE DATE. By the fifteenth (15th) day following the end of the previous calendar month of operation under this Agreement, MANAGER shall provide TRIBE with verifiable financial reports which include a statement of the gross revenues, Operating Expenses, Gaming Net Revenues and Non-Gaming Net Revenues of the Tribal Gaming Operation. The monthly report shall include a summary of payroll expenditures.

8.10 RETIREMENT OF DEVELOPMENT EXPENSES, PAYMENT OF EXPENSES AND COMPENSATION. In consideration of the performance of its duties by MANAGER as described herein, and in consideration of the contributions of TRIBE, the proceeds of the Tribal Gaming Operation shall be distributed in accordance with the following provisions:

(A) Time and Method of Payments. Within five days after MANAGER presents the monthly report required by Section 8.9 herein to TRIBE, the parties shall distribute MANAGER'S monthly payment in the form of a check from the Revenue Account payable to MANAGER. The parties shall distribute TRIBE'S monthly payment in the form of a check from the Revenue Account payable to TRIBE and delivered to the Clerk of TRIBE at the address for TRIBE set forth in Section 10.1 herein. In addition, any and all other funds advanced to the TRIBE, under this Agreement or any other related agreement, shall be paid to the Clerk of TRIBE.

(B) Guaranteed Monthly Minimum Payment. TRIBE, commencing on the date of commencement of any Gaming at the Facility (whether Class II Gaming, Class III Gaming or both), shall be entitled to a guaranteed monthly minimum payment which shall have preference over the

payment of the Development Expenses authorized pursuant to Section 8.10(C) herein and over the payment of all management fees specified in Section 8.10(D) herein. The amount of the initial guaranteed monthly minimum payment to TRIBE shall be Ten Thousand ($10,000.00) Dollars during the term of this Agreement, commencing on the first full month that the Tribal Gaming Operation is open for business. If the Tribal Gaming Operation opens for business on other than the first day of a calendar month, the guaranteed monthly minimum payment shall be prorated for that month.

The guaranteed monthly minimum payment shall be subject to Section 10.9 of this Agreement. In the event there are insufficient Tribal Gaming Operation funds to provide for the guaranteed monthly minimum payment, MANAGER shall advance the amount of money necessary to provide the guaranteed monthly minimum payment to TRIBE. In the event TRIBE becomes entitled to a Gaming Net Revenue and Non-Gaming Net Revenue distribution under Section 8.10(D) which is greater than the guaranteed monthly minimum payment amount, any outstanding amounts previously advanced to TRIBE by MANAGER to satisfy the guaranteed monthly minimum payment shall be reimbursed to MANAGER without interest from such funds prior to TRIBE'S receipt of such funds.

(C) Development Expenses. MANAGER shall be reimbursed by the TRIBE for the Development Expenses as set forth in Section 6.1(B) herein, as properly documented and verified by MANAGER to TRIBE, including interest accruing on the principal amount beginning when advanced (but in no event prior to the Effective Date) at the rate set forth in Section 6.1(B). Nothing herein shall be construed as an encumbrance or lien on said property to the benefit of MANAGER, or authorizing MANAGER to seek the placement of an encumbrance or lien on the property which is vested in the name of TRIBE or in the name of the United States of America in trust for TRIBE. MANAGER'S contribution of the Development Expenses incurred by MANAGER pursuant to Section 6.1(B) plus interest shall be repaid by the TRIBE as follows: (i) the Development Expenses up to and including the amount of Twelve Million Dollars ($12,000,000) shall be repaid with monthly payments by the Tribal Gaming Operation on behalf of the TRIBE from the Revenue Account in the amount of the Monthly Base Payment; and (ii) contemporaneously with the payments described in (i), any and all Development Expenses above Twelve Million Dollars ($12,000,000) shall be repaid with payments by the Tribal Gaming Operation from the Revenue Account on behalf of the TRIBE in the amount of Five Hundred Thousand Dollars ($500,000) per month until all principal and interest amounts are repaid in full. Such payments shall be made after the payment of TRIBE'S guaranteed monthly minimum payment and after the split of the Gaming Net Revenues and Non-Gaming Net Revenues, but prior to actual distribution to TRIBE of the remaining monies due TRIBE pursuant to the split (other than the guaranteed monthly minimum payment, which shall in no case be reduced). Such payments shall be deposited into a bank account designated by MANAGER, and shall continue until the Development Expenses, plus interest, incurred by MANAGER pursuant to Section 6.1(B) have been paid in full. Such payments may be prepaid without penalty by TRIBE at any time in TRIBE'S discretion.

(D) Compensation. During the term of this Agreement, TRIBE shall receive seventy-five percent (75%) of the Gaming Net Revenues (Cash Flow) and seventy-five percent (75%) of the Non-Gaming Net Revenues, which remain after all Operating Expenses (Cash Flow) payments have been made and prior to the payment of Development Expenses; provided that the guaranteed monthly minimum payment required by Section 8.10(B) herein shall be included in TRIBE'S seventy-five

percent (75%) share. MANAGER shall receive twenty-five percent (25%) of the Gaming Net Revenues (Cash Flow) and twenty-five percent (25%) of the Non-Gaming Net Revenues (Cash Flow), which remain after Operating Expenses payments have been made and prior to payment of Development Expenses; provided, however, that in no event shall such amount be greater than twenty-nine point nine percent (29.9%) of the Gaming Net Revenues (GAAP/Accrual) ("MANAGER'S GAAP Fee"). The total amount of all operating expenses of the Tribal Gaming Operation paid to the MANAGER (or other person or entity with a financial interest in this Agreement), including but not limited to the Management Fees and payments for training, shall not exceed 29.9% of the Gaming Net Revenues (GAAP/Accrual) of the Tribal Gaming Operation. Provided, further, that in the event that such 29.9% is exceeded, then TRIBE shall receive the remainder of funds (*i.e.*, in excess of the 29.9%) otherwise due to MANAGER for the month. Such 75%/25% division of the Gaming Net Revenues and the Non-Gaming Net Revenues shall continue throughout the term of this Agreement, irrespective of whether the Development Expenses have been repaid to MANAGER in full pursuant to Section 8.10(C).

8.11 ACCOUNTING AND BOOKS OF ACCOUNT.

(A) Table Games Revenue. All revenue from table games shall be recorded on a shift by shift basis for each gaming table. MANAGER shall maintain such records and provide them to the Executive Director on a daily basis.

(B) Bingo and Mini-Game Receipts. All revenue from bingo and related Class II games shall be recorded on a Session-by-Session basis. MANAGER shall maintain such records and provide them to the Executive Director on a daily basis. MANAGER shall maintain and provide TRIBE with an adequate accounting acceptable to TRIBE and MANAGER for income from Mini-Games pursuant to generally accepted accounting principles.

(C) Cash Register Revenue Receipts. Receipt forms for all revenue from Concessions shall be based upon a cash register system. All transactions shall be recorded on a receipt given to the customer and on a duplicate tape or electronic storage media inside the cash register. The following information shall appear upon the receipt and duplicate tape or electronic storage media: the name of the Tribal Gaming Operation operating the activity; the date the transaction took place; the receipt number; the amount of money paid, or a description of other consideration paid for the opportunity to play. The cash register receipt rolls or electronic storage media maintained in the machine showing those transactions shall be retained with the records of the Tribal Gaming Operation for a period of not less than five (5) years.

(D) Internal Revenue Service Reporting. MANAGER shall be responsible for compliance with the Internal Revenue Service Code of 1986, as amended, including Sections 1441, 3402(q), 6041 and 6050 I and Chapter 35 of such Code, requirements concerning the reporting and withholding of taxes with respect to the winnings from the Tribal Gaming Operation.

(E) Tribe's Designated Agent Responsible for Financial Oversight. The Tribal Gaming Commission and the Executive Director shall be responsible for oversight of compliance with this Agreement, and of MANAGER'S records, pursuant to the Ordinance and the Compact. MANAGER shall permit the Executive Director employed by TRIBE to have full, immediate and unrestricted access to the operations of the Tribal Gaming Operation, and the right to verify the daily gross revenue and income of the Tribal Gaming Operation, including without limitation the right to install, at TRIBE's sole expense, an electronic surveillance system and to employ personnel to operate such system and to make reports directly to the Tribal Gaming Commission, the right to attend all gaming activities, inspect the cash register receipt system, inspect inventory, be present when receipts are counted, and participate in all aspects of the operation for monitoring purposes.

(F) Monthly Statements. MANAGER shall provide monthly statements to the Tribal Gaming Commission showing revenues and expenses of the gaming operation as attachments to the monthly payment to TRIBE, as required in Section 8.9 herein. MANAGER shall, in addition, prepare a monthly reconciliation of the MANAGER'S GAAP Fee to the Management Fee, calculated pursuant to Section 8.10(D) for review by the Executive Director.

(G) Records. MANAGER shall maintain full and accurate books of account at its principal office. The books shall be kept on an accrual basis, and the records shall be prepared and maintained by using generally accepted accounting principles. The Tribal Gaming Commission, including the Executive Director, shall have full, immediate and unrestricted access to, and the full, immediate and unrestricted right to inspect and examine all books and financial records concerning the Tribal Gaming Operation at all times.

(H) Accounting Services. MANAGER shall hire a certified public accounting firm to perform accounting services for the Tribal Gaming Operation, provided that the form and manner of maintenance of the books of account for the Tribal Gaming Operation are consistent with generally accepted accounting principles. Such accounting services shall be an Operating Expense.

(I) Audit. An independent audit by a certified public accountant selected by TRIBE shall be performed annually, and shall meet the standards of 25 C.F.R. § 571.12. Such audit costs shall be an Operating Expense. TRIBE, at its own expense, shall have the right at any time to secure an independent audit of the Tribal Gaming Operation. All contracts for supplies, services or concessions for a contract amount in excess of Twenty-five Thousand Dollars ($25,000) annually relating to such gaming shall be subject to such independent audits. TRIBE and MANAGER agree that any underpayments or overpayments of the Management Fee vis a vis the limits set forth in Section 8.10(D), based upon the calculations of the MANAGER'S GAAP Fee, will either be refunded to TRIBE or paid to MANAGER, with interest at a rate equal to the prime rate of Citibank plus one percent (1%), within sixty (60) days after the annual audit.

(J) Compact/Miscellaneous. The accounting, books of account and audits of the Tribal Gaming Operation shall conform to the requirements of the Compact, in particular

Section 3 and Appendices "B" and "C" thereof. Further, MANAGER shall provide for the establishment and maintenance of satisfactory accounting systems and procedures, as required by 25 C.F.R. § 531.1(c), that shall (i) include an adequate system of internal accounting controls; (ii) be susceptible to audit; (iii) permit the calculation and payment of the Management Fees; and (iv) provide for the allocation of operating expenses among TRIBE, MANAGER and any other user of shared facilities.

8.12 INSURANCE AND BONDS. MANAGER shall obtain public liability insurance in the amount of at least Fifty Million Dollars ($50,000,000) per occurrence for all activities on the subject property. MANAGER shall also keep the buildings, improvements, and contents therein insured for their full replacement value against loss or damage by fire, with extended coverage endorsement to include robbery, theft, malicious mischief and vandalism coverage. The exact nature and extent of such coverage shall be jointly agreed upon by the parties. TRIBE and MANAGER shall be named as the insured in all policies to the extent of their interests and MANAGER shall supply written evidence of such coverage to TRIBE and to the Commission. The costs of said insurance shall be deemed a part of the Operating Expenses of the Tribal Gaming Operation.

8.13 SUBCONTRACTS; ASSIGNMENTS. MANAGER may, with the written consent of the Tribal Gaming Commission, subcontract with other businesses to provide non-gaming services directly related to the operation of the Tribal Gaming Operation; provided, however, that no subcontract or assignment shall transfer or in any other manner, convey any interest in land or other real property. All subcontracts for supplies, services and concessions for a contract amount in excess of Twenty-five Thousand Dollars ($25,000) shall be subject to independent audit pursuant to the requirements of 25 U.S.C. § 2710(b)(2)(D). All vendors under such subcontracts shall comply with the provisions of Section 6(k) of the Compact. This Agreement shall be assignable by MANAGER with the consent of TRIBE, subject to the approval of the Chairman pursuant to 25 C.F.R. § 535.2.

SECTION 9. DISCLOSURES AND WARRANTIES

9.1 PROVISION OF INFORMATION TO THE COMMISSION AND THE STATE OF NEW YORK. MANAGER agrees to provide all information required by the Indian Gaming Regulatory Act, 25 U.S.C. § 2711 and 25 C.F.R. Part 533 to TRIBE for transmission to the Secretary or his authorized representative, and/or the Chairman or his authorized representative as soon as practicable after the date of execution of this Agreement. MANAGER shall also provide all information as required from time to time by the Compact to the gaming agency of the State of New York.

9.2 DISCLOSURES REGARDING PERSONS HAVING DIRECT OR INDIRECT FINANCIAL INTEREST IN CONTRACT. Pursuant to 25 C.F.R. Part 537, all persons having a direct or indirect financial interest in this Agreement and all persons having a management responsibility, and all information regarding said persons which is required by such regulations, are listed in Attachment I hereto.

9.3 APPROVAL OF CHANGE IN OPERATIONAL CONTROL OF MANAGER. Any changes in the operational control of MANAGER and any changes in persons with a financial interest in or management responsibility for this Agreement, including without limitation any change

in the ownership of MANAGER in which any person or entity not previously disclosed pursuant to Section 9.2 herein becomes a partner of MANAGER, shall be submitted as a modification of this Agreement for written approval of TRIBE and the Chairman of the Commission under 25 C.F.R. Part 535. Approval of any such change in control or ownership of MANAGER must be preceded by a complete background investigation of such person or entity.

9.4 FINANCIAL INTERESTS. MANAGER shall comply with the provisions of 25 C.F.R. Part 537.

9.5 BACKGROUND INVESTIGATIONS. MANAGER agrees that all parties in interest referenced in Section 9.2 herein shall be required to consent to background investigations to be conducted pursuant to the terms of IGRA, the Ordinance and the Compact. MANAGER shall require all Key Employees and Primary Management Officials to submit to such investigations prior to employment of said employees. All other employees of the Tribal Gaming Operation shall also submit to such investigations pursuant to the provisions of the Ordinance or Compact. MANAGER further agrees that all persons in interest listed in Section 9.2 herein shall disclose any information requested by TRIBE which would facilitate in the background and financial investigations and will cooperate fully with such investigations.

9.6 DISCLOSURE OF INFORMATION. Any false or deceptive disclosures or failure to cooperate fully with such investigations by an employee of MANAGER or an employee of the Tribal Gaming Operation shall result in the immediate dismissal of such employee. MANAGER agrees that whenever there is any change in the information disclosed pursuant to this Agreement, MANAGER shall immediately notify the Tribal Gaming Commission of such change not later than thirty (30) days following MANAGER'S actual knowledge of such change.

9.7 NO PAYMENT MADE. MANAGER hereby specifically represents that no payment whatsoever has been paid to any Elected Official of TRIBE or Relative of an Elected Official of TRIBE nor has promise of payment been made by MANAGER to any Elected Official of TRIBE or Relative of an Elected Official of TRIBE to secure, obtain or maintain this Agreement or any other privilege associated with this Agreement. No payments will be made in the future to such persons for the purpose of obtaining or maintaining this Agreement, or any other privilege associated herein.

9.8 NO PARTY INTEREST. MANAGER hereby specifically represents that no person or entity having a direct or indirect financial interest in, or management responsibility for this Agreement is an Elected Official of TRIBE or Relative of an Elected Official of TRIBE. In the event any person or entity having a direct or indirect financial interest in, or management responsibility for this Agreement becomes an Elected Official of TRIBE or Relative of an Elected Official of TRIBE, said person shall immediately divest himself of his interest in this Agreement.

SECTION 10. ENFORCEMENT AND TERMINATION OF AGREEMENT

10.1 NOTICE. To be effective, all notices, consents, agreements or other communications required or permitted hereunder shall be in writing. A written notice or other communication shall be deemed to have been given hereunder (i) if delivered by hand, when the

notifying party delivers such notice or other communication to all other parties to this Agreement, (ii) if delivered by telecopier or overnight delivery service, on the first business day following the date such notice or other communication is transmitted by telecopier or timely delivered to the overnight courier, or (iii) if delivered by mail, on the third business day following the date such notice or other communication is deposited in the U.S. mail by certified or registered mail addressed to the other party. Mailed or telecopied communications shall be directed as follows unless written notice of a change of address or telecopier number has been given in writing in accordance with this Section:

If to the MANAGER:	Massena Management, LLC ATTN: Ivan Kaufman, President 333 Earle Ovington Boulevard, Rm. 900 Uniondale, New York 11553 Telecopier No. (516) 832-8045
With a copy to:	Walter K. Horn, Esq. 333 Earle Ovington Boulevard, Rm. 900 Uniondale, New York 11553 Telecopier No. (516) 832-8045
If to TRIBE:	St. Regis Mohawk Tribe ATTN: Chief of the St. Regis Mohawk Tribe Community Building Hogansburg, New York 13655 Telecopier No. (518) 358-3203
With a copy to:	Dexter Lehtinen, Esq. Lehtinen, O'Donnell, Vargas & Reiner 7700 North Kendall Drive, Suite 303 Miami, Florida 33156 Telecopier No. (305) 279-1365

10.2 EXPIRATION OF TERM. The term of this Agreement shall expire upon the date five (5) years after the commencement of any Gaming at the Tribal Gaming Operation (whether Class II Gaming, Class III Gaming or both), unless mutually extended pursuant to Section 5.2.

10.3 VOLUNTARY TERMINATION OF AGREEMENT. This Agreement may be terminated upon mutual written consent of both parties.

10.4 TERMINATION DUE TO MATERIAL BREACH. Either party may terminate this Agreement, following the provisions for notice of cure required in Section 10.5 herein, if the

other party commits, or allows to be committed, any material breach of this Agreement. Notice of the termination shall be provided by TRIBE to the Chairman of the Commission within ten (10) days after termination. Material breach of this Agreement shall include, but not be limited to, the following:

(A) Subject to the provisions of Sections 10.5 and 10.9, breach of warranty or failure of either party to perform any material duty or obligation for a period of thirty (30) consecutive business days after the required date of performance as set forth by the terms of this Agreement;

(B) The conviction of any person or entity having a direct financial interest in, or management responsibility for this Agreement of any felony, of any crime involving any aspect of the gaming operation or involving a gaming law violation, or of any crime involving moral turpitude, by a court of competent jurisdiction;

(C) The dissolution, insolvency or bankruptcy of MANAGER;

(D) A final unappealable decision by the Commission of any material violation of IGRA;

(E) Revocation of or refusal to renew any license which may hereafter be required by TRIBE pursuant to applicable tribal law in effect at the time of issuance or renewal of the license, provided that such revocation or refusal to renew license shall be for cause. TRIBE shall not unreasonably seek such revocation and shall not unreasonably refuse to renew license, and shall provide MANAGER with due process at every phase of any proceeding relating to revocation of license or refusal to renew license; and

(F) Revocation of or refusal to renew any license which may hereafter be required by the State of New York pursuant to the Compact, provided that such revocation or refusal to renew license shall be for cause.

10.5 NOTICE PRIOR TO TERMINATION FOR MATERIAL BREACH. Neither party may terminate this Agreement on the grounds of a material breach unless (i) written notice is provided by the nondefaulting party to the alleged defaulting party identifying the nature of the material breach and its intention to terminate this Agreement, and (ii) the defaulting party fails to cure or take steps to substantially cure such breach within thirty (30) days after receipt of such notice. Discontinuance or substantial correction of the material breach within such thirty (30) day notice period shall constitute a cure thereof.

10.6 TERMINATION OR EXPIRATION OF AGREEMENT; DISPOSITION OF PROPERTY RECORDS, GAMING NET REVENUES AND NON-GAMING NET REVENUES. Upon the expiration of the term of this Agreement, or if this Agreement is terminated or the Tribal Gaming Operation ceases operations prior to the expiration of the term of this Agreement or is ordered to cease operations by a court of competent jurisdiction, all funds contained in the Daily Expense Account, the Payroll Account and the Prize Account shall be transferred into the Revenue Account, and all financial records, including financial reports, lists of inventory, bank

statements, canceled checks, prize receipts, and all other financial records required to be kept by MANAGER pursuant to this Agreement shall be immediately placed in the possession of TRIBE. Following an audit of the Tribal Gaming Operation by an independent certified public accountant, and satisfaction by TRIBE and MANAGER that all Operating Expenses and Development Expenses, plus interest, for the Tribal Gaming Operation have been paid, TRIBE shall distribute to MANAGER the remaining Gaming Net Revenues and Non-Gaming Net Revenues accrued as of the date of the cessation of operations payable to MANAGER in accordance with the provisions of this Agreement. The terms and conditions contained in this Section shall survive any termination of this Agreement.

10.7 TERMINATION FOR CAUSE; RETURN OF MANAGER'S FINANCIAL CONTRIBUTIONS. In the event this Agreement is terminated for cause due to the fault of either party and MANAGER has not been repaid by TRIBE for the Development Expenses, plus interest, pursuant to Section 8.10(C) herein, then and in that event, TRIBE shall make monthly payments to MANAGER of the Monthly Base Payment and any additional payments of Five Hundred Thousand Dollars ($500,000) per month as set forth in Section 8.10(C) herein, from TRIBE'S share of "net revenues" (as defined by IGRA and the regulations thereunder) and non-gaming related net revenues from any gaming enterprise within TRIBE'S jurisdiction, if any, until MANAGER has been repaid the total Development Expenses, plus interest, advanced by MANAGER. The terms and conditions contained in this Section shall survive any termination of this Agreement.

10.8 RESOLUTION OF DISPUTES; LIMITED WAIVER OF SOVEREIGN IMMUNITY. TRIBE and MANAGER hereby covenant and agree that they each may sue or be sued to enforce or interpret the terms, covenants and conditions of this Agreement or to enforce the obligations or rights of the parties hereto in accordance with the terms and conditions set forth in this Section.

(A) Forum. Any action with regard to a controversy, disagreement or dispute between the TRIBE and MANAGER arising under this Agreement shall be brought before the appropriate United States District Court. In the event such federal court should determine that it lacks subject matter jurisdiction over any such action, such action shall be brought before the appropriate state court.

(B) Waiver of Tribal Remedies. TRIBE hereby expressly waives any right to proceed before any tribal court or authority of TRIBE and further expressly waives any right which it may possess to require MANAGER to exhaust tribal remedies prior to bringing an action in federal court or state court as provided above.

(C) Limited Waiver of Sovereign Immunity. TRIBE hereby specifically and expressly waives its sovereign immunity from suit to the extent necessary to allow MANAGER to bring any action at law or in equity to enforce or interpret the terms and conditions of this Agreement, including without limitation the right to obtain injunctive relief and/or monetary damages as determined by a court of competent jurisdiction and to the extent necessary to allow MANAGER to bring any action at law or in equity to challenge, contest or interpret any laws, ordinances, regulations, licensing procedures or enactments of any sort by TRIBE which relate to or affect in any way the ability of MANAGER to engage in gaming under this Agreement, including without limitation the right to obtain injunctive

relief and/or monetary damages as determined by a court of competent jurisdiction. Nothing contained in this Agreement shall be construed as waiving sovereign immunity in any suit for payment of damages from lands or funds held in trust for TRIBE by the United States.

(D) Survival. The waivers contained in this Section shall survive any termination of this Agreement.

10.9 FORCE MAJEURE; INTERRUPTION OR FRUSTRATION OF PURPOSE OF THIS AGREEMENT.

(A) Force Majeure. Neither TRIBE nor MANAGER shall be considered in default or in breach of any terms or conditions of this Agreement in the event performance of one or both of such parties' obligations hereunder is delayed because of an unforeseeable cause beyond the parties' control and without the parties' fault and/or negligence, including, but not limited to, acts of God, earthquakes, weather, war, riots, acts of a public enemy, acts of the federal government, acts of the state government, acts of another party, fines, floods, epidemics, strikes, or for delays of any suppliers due to such causes. In the event of any such delay at any time, the completion or delivery under this Agreement shall be extended for the period of such delay upon written notice from the party seeking the extension to the other party.

(B) Interruption or Frustration of Purpose of this Agreement. In the event any governmental entity by means of police, judicial, legislative or administrative action, whether federal, state, county, municipal or tribal, or any group of individuals through the use of force or physical intimidation effectively inhibit regularly scheduled gaming activities from proceeding on a reoccurring basis, MANAGER may, in its judgment, suspend the performance of its obligations hereunder for such time as the Tribal Gaming Operation is so prevented from operating. If Tribal Gaming Operation is not permitted to operate for any period of time exceeding fourteen (14) days, then no payment whatsoever shall be made to TRIBE or MANAGER from the Gaming Net Revenues and/or the Non-Gaming Net Revenues. If such interruption, which in the opinion of either party hereto, effectively prevents the Tribal Gaming Operation from regularly engaging in the business intended hereunder, it is agreed that legal counsel shall be engaged, the selection of which shall be jointly agreed upon by TRIBE and MANAGER (such cost and expense for counsel shall be deemed an Operating Expense of the Tribal Gaming Operation) to defend the interests of MANAGER and TRIBE.

In the event at any time during the term of this Agreement such counsel advises that, in its legal opinion, neither TRIBE nor MANAGER is likely to prevail in legal proceedings or it is impractical to continue the venture as contemplated hereunder, the purpose of this Agreement shall be deemed to be frustrated. If, at the time such decision is made, the premises for Tribal Gaming Operation have been partially completed or substantial monies have been committed or expended in anticipation of construction, TRIBE and MANAGER hereby covenant and agree to modify this Agreement and the use of Site to convert the Tribal Gaming Operation into another economic enterprise, of a nature suitable to MANAGER and not inconsistent with TRIBE'S known social, cultural and economic needs in order to recoup Development Expenses, plus interest, in accordance

with the percentages to be negotiated between TRIBE and MANAGER for the balance of the term of this Agreement or as per the agreement of the parties hereto.

The preceding paragraph shall not constitute a transfer or assignment of any present interest in land to MANAGER, nor shall it be considered an alienation of the ownership interest of TRIBE.

SECTION 11. EFFECTIVE DATE; MISCELLANEOUS

11.1 EFFECTIVE DATE. This Agreement shall be effective and binding as of date of the approval of this Agreement by the Chairman of the Commission, as provided by 25 C.F.R. § 531.1(N). The final approval of this Agreement shall be subject to the submission by MANAGER of financing acceptable to the Commission and MANAGER.

11.2 CONSENT. Whenever the consent of a party shall be required to be obtained by the other party under any provision of this Agreement, such consent shall not be unreasonably withheld.

11.3 INTEGRATION. This Agreement embodies the entire agreement and understanding among the parties hereto relating to the subject matter hereof and supersedes all prior agreements, understandings, representations, and discussions, including without limitation the Memorandum of Understanding.

11.4 AMENDMENT. TRIBE and MANAGER shall not amend, modify, or waive any provision of this Agreement without the written consent of both parties unless expressly permitted under the terms of this Agreement.

11.5 SEVERABILITY. If any one or more of the provisions contained in this Agreement, or any application hereof, shall be invalid, illegal, or unenforceable in any respect, the validity, legality, or enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

11.6 GOVERNING LAW. This Agreement shall be governed by the laws of the United States of America, and where such laws are nonexistent or inapplicable, the laws of the State of New York.

11.7 COUNTERPARTS. This Agreement may be executed in one or more counterparts, all of which together shall constitute one and the same instrument.

11.8 SURVIVAL. The terms and conditions contained in Sections 11.1 through 11.8 shall survive any termination of this Agreement.

TRIBE represents and warrants that the terms and conditions of this Agreement shall become binding and enforceable upon TRIBE upon the execution of this Agreement by the Chief of TRIBE and the members of the St. Regis Mohawk Tribal Council pursuant to Resolution No. TCR 97-119 of the Tribal Council.

Dated: November 7, 1997

THE ST. REGIS MOHAWK TRIBE

By: _____
Edward Smoke, Tribal Chief Executive

Dated: November 7, 1997

PRESIDENT R.C.- ST. REGIS MANAGEMENT COMPANY
By: Massena Management, LLC, Managing General Partner

By: _____
Ivan Kaufman, President

NOTICE AND ACKNOWLEDGMENT OF PLEDGE

Recitals:

A. President R.C. - St. Regis Management Company ("PRC") and The St. Regis Mohawk Tribe, a federally recognized Indian tribe (the "Tribe") have entered into a Fourth Amended and Restated Management Agreement dated November 7, 1997, together with an amendment thereto dated February 11, 1999 (together, the "Agreement").

B. Under the Agreement, PRC has, among other things, agreed to pay all of the "Development Expenses", as defined in Section 6.1(B) of the Agreement, of the "Facility", as defined in Section 1.12 of the Agreement, and such Development Expenses, with interest thereon at the rate described in Section 6.1 (B), constitute a loan from PRC to the Tribe.

C. That loan is to be repaid by the Tribe to PRC in monthly payments consisting of a "Monthly Base Payment", as defined in Section 1.21 of the Agreement, and an additional payment of $500,000, as described in Section 8.10 (C) of the Agreement (the "Repayment Amounts"). As provided in Section 10.7 of the Agreement, the obligation of the Tribe to pay the Repayment Amounts shall survive any termination of the Agreement for cause until the total Development Expenses, with interest, have been repaid by the Tribe to PRC.

D. PRC and Miller & Schroeder Investments Corporation ("M&S") have entered into a loan agreement pursuant to which M&S will lend money (the "Loan") to PRC in order to finance a portion of the Development Expenses. As security for the repayment of the Loan, with interest, PRC has pledged to M&S the Repayment Amounts and all other amounts payable by the Tribe to PRC under the Agreement (the "Management Fees;" the Repayment Amounts and the Management Fees are collectively referred to herein as the "Agreement Payments").

E. In furtherance of that pledge, PRC desires that the Tribe make all Agreement Payments that are owed to PRC in the manner described in this Notice and Acknowledgment.

Acknowledgments and Agreements:

1. The Loan is an obligation of PRC, not the Tribe.

2. The Tribe acknowledges that PRC has pledged its interest in the Agreement Payments to M&S as security for the repayment of the Loan. Upon notice to the Tribe, jointly given by PRC and M&S, Tribe agrees that the Agreement Payments

will be paid by Tribe, or on its behalf, to an escrow account established with a state or national bank and designated by PRC and M&S (the "Escrow Account").

3. The Tribe acknowledges that the Development Expenses shall be repaid to PRC, with interest, at an annual rate equal to thirteen and one-half percent (13.5%) unless the total amount of the Development Expenses is repaid by the Tribe to PRC within one and one half years from the date the Tribal Gaming Operation is open for business to the public, in which event the annual rate will be equal to nine and one-half percent (9.5%), each as calculated pursuant to Section 6.1(B) of the Agreement.

4. The Tribe acknowledges that its obligation to pay the Repayment Amounts survives any termination of the Agreement as set forth in Section 10.7 of the Agreement and that M&S is lending money to PRC in reliance upon Tribe's continuing obligation to pay the Repayment Amounts. The Tribe agrees that it will pay all Repayment Amounts due to PRC to the Escrow Account without any set-off or deduction whatsoever notwithstanding any prior termination of the Agreement, or any defense, set-off, counterclaim or recoupment arising out of any claim against PRC or M&S, until all Development Expenses, with interest at the rate provided in Section 6.1(B) of the Agreement, have been fully repaid.

5. The Tribe further agrees that M&S has not assumed any duties under the Agreement or made any warranties whatsoever as to the Agreement. The Tribe agrees not to make any change to the Agreement affecting any section of the Agreement relating to the Repayment Amounts without the prior written consent of M&S.

6. The Tribe warrants that its covenants and agreements under Section 3 of the Agreement are true and correct on the date hereof.

7. The Tribe agrees that until the Loan is paid in full M&S shall be entitled to the benefits of and to enforce the agreements of the Tribe under the Agreement relating to the payment of the Repayment Amounts to the same extent as PRC.

8. The Tribe, PRC and M&S hereby covenant and agree that they each may sue or be sued to enforce or interpret the terms, covenants and conditions of this Notice and Acknowledgment or to enforce the obligations or rights of the parties hereto in accordance with the following terms and conditions:

   (A) Any action with regard to a controversy, disagreement or dispute between the Tribe, PRC or M&S arising under this Notice and Acknowledgment shall be brought before the appropriate United States District Court. In the event such federal court should determine that it lacks subject matter jurisdiction over any such action, such action shall be brought before the appropriate state court.

(B) The Tribe hereby expressly waives any right to proceed before any tribal court or authority of Tribe and further expressly waives any right which it may posses to require PRC or M&S to exhaust tribal remedies prior to bringing an action in federal court or state court as provided above.

(C) The Tribe hereby specifically and expressly waives its sovereign immunity from suit to the extent necessary to allow PRC or M&S to bring any action at law or in equity to enforce or interpret the terms and conditions of the Agreement including without limitation the right to obtain injunctive relief and/or monetary damages as determined by a court of competent jurisdiction. Nothing contained in this Notice and Acknowledgment shall be construed as waiving sovereign immunity in any suit for payment of damages from all of Tribe's reservation lands or funds held in trust for Tribe by the United States.

9. This Notice and Acknowledgment of Pledge shall constitute an agreement between the Tribe and M&S upon its execution and delivery to M&S.

Date: 12 Feb 99

PRESIDENT R.C.- ST. REGIS MANAGEMENT COMPANY

By: _____
Name: Ivan Kaufman
Title: President

THE ST. REGIS MOHAWK TRIBE

By: _____
Name: Edward D. Smoke
Title: Tribal Chief Executive

MILLER & SCHROEDER INVESTMENTS CORPORATION

By: _____
Name: KENNETH R LARSEN
Title: Vice President

BKY Case Nos.
02-40284 to 02-40286
Exhibit C

St. Regis Mohawk Tribe

Chief Executive Officer
Edward D. Smoke
Vice-Chief Executive Officer
John Bigtree Jr.

Tribal Council Legislators
Hilda E. Smoke
Bryan J. Garrow
Barbara A. Lazore

Rt. 37 Box 8A
Hogansburg, New York 13655
Tel. 518-358-2272
Fax 518-358-3203

Tribal Clerk
Carol T. Herne

Alma Ransom
Paul O. Thompson

TRIBAL COUNCIL RESOLUTION

TCR 99-005

PRESIDENT R.C.-ST. REGIS MANAGEMENT COMPANY

AMENDMENT OF MANAGEMENT AGREEMENT RE: DEVELOPMENT EXPENSES

WHEREAS, the Saint Regis Mohawk Tribal Council is the duly recognized governing body of the Saint Regis Mohawk Tribe, and;

WHEREAS, the Tribal Council is responsible for promoting the health, safety, education and general welfare of all Tribal community members, and;

WHEREAS, the Tribal Council is authorized under Article VIII, Section 1(l) to negotiate and contract with federal, state, local and other governments, and with the council and governing authorities of other Indian tribes, or Indian organizations and private organizations, corporations and other entities; and

WHEREAS, the Saint Regis Mohawk Tribe entered into a Fourth Amended and Restated Management Agreement dated November 7, 1997, together with an addendum to said Management Agreement dated December 23, 1997, between the Tribe and President R.C.-St. Regis Management Company (the "Manager") (collectively, the "Management Agreement"), and;

WHEREAS, the Management Agreement between the Tribe and the Manager has bee approved by the National Indian Gaming Commission, and;

WHEREAS, Section 4.1 and 6.1(B) of the Management Agreement provides that the costs and expenses of the Facility (the "Development Expenses") shall not exceed Twenty Million Dollars ($20,000,000), and:

WHEREAS, the Manager has presented to the Tribe information pertaining to the cost of developing the Facility to a standard satisfactory to both the Tribe and the Manager, and;

WHEREAS, Section 6.1(B) of the Management Agreement provides that the rate of interest to be paid on the Development Expenses shall vary depending on when they are repaid by the Tribe; and

WHEREAS, Section 10.8 of the Management Agreement provides for a waiver of sovereign immunity

which excludes certain lands and funds held in trust; and

WHEREAS, the Manager has requested that the Tribe execute an agreement entitled "Notice and Acknowledgment of Pledge" for the purpose of assisting the Manager in obtaining a loan for the increased Development Expenses; and

WHEREAS, the Tribe has requested certain changes in the Management Agreement pertaining both to the interest provisions pertaining to the Development Expenses and to the sovereign immunity provisions which are satisfactory to the Manager; and

WHEREAS, the Tribe is agreeable to executing the agreement entitled "Notice and Acknowledgment of Pledge" for the purpose of assisting the manager in obtaining a loan for the increased Development Expenses as long as it contains the same changes as are contained in this Resolution; and

WHEREAS, the Tribe and the Manager desire to amend the Management Agreement to increase the allowable amount of Development Expenses, change the repayment requirements thereof, amend the sovereign immunity provisions thereof and authorize the execution of the said "Notice and Acknowledgment of Pledge;" then

THEREFORE BE IT RESOLVED THAT the Tribe hereby approves the amendment of Section 4.1 and 6.1(B) of the Management Agreement by deleting the following: "...in no event shall the Development Expenses as set forth above exceed Twenty Million Dollars ($20,000,000);" and substituting therefore the following: "...in no event shall the Development Expenses as set forth above exceed Twenty-eight Million One Hundred Fifty Thousand Dollars ($28,150,000)", and

FURTHER BE IT RESOLVED THAT the Tribe hereby approves the amendment of Section 10.7 of the Management Agreement by deleting in the sixth line thereof the following: "...from the TRIBE'S share of "net revenues" (as defined by IGRA and the regulations thereunder) and non-gaming related net revenues from any gaming enterprise within the TRIBE'S jurisdiction, if any, until MANAGER has been repaid the total Development Expenses, plus interest, advanced by MANAGER," and substituting therefore the following: "...from TRIBE'S share of Gaming Net Revenues and Non-gaming Net Revenues of the Tribal Gaming Operation ("Akwesasne Mohawk Casino") until MANAGER has been repaid the total Development Expenses, plus interest, advanced by MANAGER." and

FURTHER BE IT RESOLVED THAT the Tribe hereby approves the following addition to the last sentence of 10.7 of the Management Agreement: "...and shall be in addition to any other remedies available to either party under the terms of this Agreement." and

FURTHER BE IT RESOLVED THAT the Tribe hereby approves the amendment of Section 6.1 B(6) of the Management Agreement by deleting the reference to: "...one (1) year ..." in the seventh and

eighth lines of the second paragraph under Section 6.1(B)(6) and substituting therefor the following: "...one and one-half (1 ½) years..." and

FURTHER BE IT RESOLVED that the Tribe hereby approves the amendment of Section 10.8 of the Management Agreement by adding the words: "...all of TRIBE'S reservation..." before the word "lands" in the last line of Section 10.8(C) of the Management Agreement; and

FURTHER BE IT RESOLVED that the Tribe hereby authorizes the execution of agreement entitled "Notice and Acknowledgement of Pledge" for the purpose of assisting the Manager in obtaining a loan for the increased Development Expenses as long as it contains or includes the same changes as are contained in this Resolution.

Type of Document: Tribal Council Resolution 99-0005 — Tribal Council Sponsor: BARBARA A. LAZORE
Subject: PRESIDENT R.C.-ST. REGIS MANAGEMENT COMPANY: AMENDMENT OF MANAGEMENT AGREEMENT
RE: DEVELOPMENT EXPENSES
Date Submitted to Tribal Council: JANUARY 8, 1999

SAINT REGIS MOHAWK TRIBE ENACTMENT PROVISIONS:

Enacted by the Saint Regis Mohawk Tribal Council on this 29th day of Jan, 1999 by a recorded vote of 5 FOR, 0 AGAINST, and 0 ABSTAINED.

Bryan Garrow, Tribal Council Chairperson

Hilda E. Smoke, Tribal Council Member

Barbara A. Lazore, Tribal Council Member

Alma Ransom Tribal Council Member

Paul O. Thompson, Tribal Council Member

ATTEST BY:

Carol T. Herne, Tribal Clerk — Date 1/29/99

TRIBAL CHIEF EXECUTIVE APPROVAL:
Approved and signed into law by the Tribal Chief Executive on this 29th day of Jan 1999.

Edward D. Smoke, Tribal Chief Executive

TRIBAL CHIEF EXECUTIVE VETO ACTION:
Vetoed by the Tribal Chief Executive on this _____ day of _____, 199____ as per Article VII, Section 5 with a Veto message.

Edward D. Smoke, Tribal Chief Executive

TRIBAL COUNCIL ACTION ON TRIBAL CHIEF EXECUTIVE VETO:

The Tribal Council in session duly met on this _____ day of _____, 199____ OVERRODE the veto of the Tribal Chief Executive by a vote of _____ FOR, _____ AGAINST and _____ ABSTAINED.

The Tribal Council in session duly met on this _____ day of _____, 199____, SUSTAINED the veto of the Tribal Chief Executive by a recorded vote of _____ FOR, _____ AGAINST, and _____ ABSTAINED.

ATTESTED TO AND RECORDED IN THE SAINT REGIS MOHAWK TRIBAL RECORDS:

Carol T. Herne, Tribal Clerk — Date 1/29/99

Recorded in Tribal Book Number: ____ Page Number: ____

THIS AGREEMENT amends the Fourth Amended and Restated Management Agreement dated as of November 7, 1997, between the St. Regis Mohawk Tribe and President R.C.-St. Regis Management Company as follows:

1. Sections 4.1 and 6.1(B) of the Management Agreement are amended by deleting therefrom the following: "...in no event shall the Development Expenses as set forth above exceed Twenty Million Dollars ($20,000,000);" and substituting therefore the following: "...in no event shall the Development Expenses as set forth above exceed Twenty-Eight Million One Hundred Fifty Thousand Dollars ($28,150,000)".

2. Section 6.1(B) (6) is amended by deleting from the third paragraph thereof, in the seventh line, the following: "...one (1) year..." and substituting therefore the following: "...one and one half (1½) years...".

3. Section 10.7 of the Management Agreement is amended by deleting from the first sentence thereof, in the sixth line, the following: "...from the TRIBE'S share of "net revenues" (as defined by IGRA and the regulations thereunder) and non-gaming related net revenues from any gaming enterprise within the TRIBES's jurisdiction, if any, until MANAGER has been repaid the total Development Expenses, plus interest, advanced by MANAGER. The terms and conditions contained in this Section shall survive any termination of this Agreement." and substituting therefore the following: "...from TRIBE'S share of Gaming Net Revenues and Non-Gaming Net Revenues of the Tribal Gaming Operation ("Akwesasne Mohawk Casino") until MANAGER has been repaid the total Development Expenses, plus interest, advanced by MANAGER. The terms and conditions contained in this Section shall survive any termination of this Agreement and shall be in addition to any other remedies available to either party under the terms of this Agreement."

4. Section 10.8 (C) of the Management Agreement is amended by adding the words "...all of TRIBE'S reservation..." before the word "lands" in the last sentence thereof.

ST. REGIS MOHAWK TRIBE

DATE: _____

BY: _____
EDWARD D. SMOKE, TRIBAL CHIEF EXECUTIVE

PRESIDENT R.C.-ST. REGIS MANAGEMENT COMPANY
BY: MASSENA MANAGEMENT, LLC, MANAGING, GENERAL PARTNER

DATE: 2-11-99

BY: _____
IVAN KAUFMAN, PRESIDENT

DATE: _____

APPROVED: _____
CHAIRMAN, NATIONAL INDIAN GAMING COMMISSION

BKY Case Nos.
02-40284 to 02-40286
Exhibit D

NOTICE OF ESCROW AGENT

Pursuant to the Notice and Assignment of Pledge, dated as of 2/24, 1999 (the "Notice of Pledge"), between President R.C.--St. Regis Management Company ("PRC"), Miller & Schroeder Investments Corporation ("M&S"), and The St. Regis Mohawk Tribe, a federally recognized Indian tribe (the "Tribe"), including paragraph 2 thereof, M&S and PRC hereby direct the Tribe to pay all Agreement Payments (as defined in the Notice of Pledge) to U.S. Bank Trust National Association, as escrow agent, with an address of 180 East Fifth Street, St. Paul, Minnesota 55101, by wire transfer according to the following instructions: ABA: 091000022 US Bank, BBK: U.S. Bank Trust N.A., A/C: 180121167365, BNF: Corporate Trust Services, A/C: 47300017, OBI: ATTN: [Debt Management - 33372840].

DATE: 2/24/99

PRESIDENT R.C.--ST. REGIS MANAGEMENT COMPANY

BY: _____
NAME: Ivan Kaufman
TITLE: Chairman, Massena Management, LLC
and Chairman, Massena Management, Corp.

MILLER & SCHROEDER INVESTMENTS CORPORATION

BY: _____
NAME: Kenneth R. Larsen
TITLE: Vice President

BKY Case Nos.
02-40284 to 02-40286
Exhibit E

NATIONAL
INDIAN
GAMING
COMMISSION

FEB 16 1999

Edward Smoke, CEO
St. Regis Mohawk Tribe
Route 37 Box 8A
Hogansburg, NY 13655
Fax (518) 358-3203

Ivan Kaufman, President
President RC- St. Regis Management Company
333 Earle Ovington Blvd., Suite 900
Uniondale, NY 11553
Fax (516) 832-8045

Dear Messrs. Smoke and Kaufman:

On February 11, 1999, President RC-St. Regis Management Company (President) submitted to the National Indian Gaming Commission (NIGC) a fax copy of a partially executed Agreement with the St. Regis Mohawk Tribe (Tribe) to Amend the Fourth Amended and Restated Management Agreement. The Agreement with original signatures, dated February 12, 1999, was submitted to the NIGC on February 16, 1999.

As provided by 25 C.F.R. Part 535, the NIGC Chairman has 30 days to approve or disapprove an amendment to an approved management contract unless the parties are notified that an additional 30 days may be required to reach a decision. Based on our preliminary review of the Agreement, it appears the NIGC may need the additional time.

The parties are requested to clarify several issues.

1. Differences exist in the Projected Summary Report (PSR), submitted on February 8, 1999, compared to the actual Amended and Re-Stated Business Plan on file at the NIGC. The PSR relies on dollar amounts from the "Amended and Re-Stated Business Plan dated September 1, 1997." The Amended and Re-Stated Business Plan on file with the NIGC is, in fact, dated September 24, 1997. The differences are as follows:

	September 24, 1997 Business Plan	PSR Original Budget 9/1/97
Land	$ 0	$ 165,000
Construction	$ 10,815,912	$ 11,175,000

2. On January 11, 1998, President signed a Standard Form of Agreement with Anderson Blake Construction. Anderson Blake Construction agreed to complete all work including

all labor, material, equipment and supervision for the construction of a 55,000 (+-) square foot casino facility and associated site work as per drawings by Archon for a fixed price of $14,180,564, as opposed to the projected cost of $10,815,912. It appears that when this fixed price contract was signed in January 1998, the maximum dollar cap for the recoupment of development and construction costs under the approved management contract would have been exceeded by at least $2 million dollars. The parties are requested to:

a. Explain why there was a $3.4 million increase in the projected construction costs between September 1997 and January 1998;
b. Submit Archon's contract and the drawings;
c. Explain why the management contract was not amended on, or before, January 11, 1998;
d. Submit copies documenting Tribal approval of the Anderson Blake contract; and,
e. Submit a copy, or draft copy, of the construction contract to complete Phase II. It is not clear if Anderson Blake will need an additional $1.8 million to complete Phase II of the project or if the listed budget change of $4.6 million is in addition to the fixed price of $14.2 million.

3. Please provide a written description of the bidding process used to select Anderson Blake.

4. We are concerned that President may have not required Anderson Blake to comply with specific management contract requirements on employment preference. Anderson Blake should have been required to give preference in employment of qualified persons to Tribal members, to children and spouses of Tribal members, and then to members of the Canadian St. Regis Mohawk Indian Tribe. The NIGC has received telephone calls alleging that Indian preference may not have occurred during the construction phase of the project. Please document compliance with the employment preference requirement.

5. The parties are requested to submit documents regarding the water contamination including:

a. Plans for providing the casino with water in accordance with New York State certification;
b. Plans for clean up of the water contamination; and,
c. Costs of the clean up and a written description of which party is responsible for paying the costs associated with the contamination.

6. Submit copies of records showing the purchase, transfer and ownership of the Route 37 access property and what property acquisitions, if any, are contemplated by this modification.

7. Explain and provide supporting documents regarding the removal of fill and the restoration of wetlands adjacent to the casino.

8. Explain and provide supporting documents on the status of obtaining a NPDES permit from the EPA.

9. It appears that the parties have verbally agreed to modify at least one (1) of the contract provisions. Modifications that have not been approved by the NIGC are void. Section 7.1(a), p.19, states that the annual base salary of the General Manager shall not exceed $150,0000. According to documents submitted to the New York State Police and New York State Racing and Wagering Board, the General Manager's salary is $200,000. If this is correct, the parties may want to modify this contract provision. Also as a reminder, the General Manager may only serve as an employee of the Tribe until his background investigation is completed by the NIGC.

If you have any questions, or need additional information, please call either Elaine Trimble or me at (202) 632-7003.

Sincerely,

Fred W. Stuckwisch
Director of Contracts and Audits

Rindels, Paula

To: Kams, Christopher
Subject: RE: NIGC review of Miller/Schroeder loan agreement

—Original Message—
From: Kams, Christopher
Sent: Tuesday, January 19, 1999 4:25 PM
To: Rindels, Paula
Subject: NIGC review of Miller/Schroeder loan agreement
Importance: High

The following comes from the draft memorandum I'm putting together regarding my review/research. Because of the fast-approaching close date, I wanted to get this info to you:

The National Indian Gaming Commission (NIGC) regulates gaming activities in Indian country pursuant to the terms of the Indian Gaming Regulatory Act. Under § 12 of IGRA (25 U.S.C. § 2711), all management contracts must be submitted to the NIGC Chairman for review and approval. NIGC's implementing regulations indicate that:

> Management contracts and changes in persons with a financial interest in or management responsibility for a management contract, that have not been approved by the Secretary of the Interior or the Chairman in accordance with the requirements of this part, are void.

25 CFR § 533.7 . With this in mind, the loan agreement must be submitted to NIGC for review. While it is our understanding that the terms of the loan from M&S to the St. Regis Mohawk Casino management company do not contain terms which would grant M&S authority to manage the Casino, and that the interest granted to M&S is merely in the development repayment amounts to the manager (as opposed to the management fee), NIGC nevertheless needs to review the loan documents to ensure that the loan agreement does not provide M&S with such authority or interest.

We contacted Fred Stuckwisch at NIGC to discuss NIGC's regulatory authority over financial arrangements with managers of class III gaming enterprises. Mr. Stuckwisch indicated that NIGC merely needs to review the loan documents to ensure that the loan agreement does not provide for management of the Casino, or an interest in the management fee, as the security. He indicated that NIGC could perform the review rapidly. He recommended forwarding the proposed loan documents to: Fred Stuckwisch, NIGC, 1441 L Street, NW, Suite 9100, Washington, DC 20005. He also recommended noting in the transmittal letter how quickly the review was needed. In light of the fast-approaching closing date, this should be done as soon as possible.

Christopher A. Kams
Dorsey & Whitney LLP
Washington, DC
202/452-6983
202/452-6989fax

Karns, Christopher

From: Karns, Christopher
Sent: Wednesday, January 20, 1999 3:35 PM
To: Rindels, Paula
Cc: Jarboe, Mark
Subject: RE: NIGC review of Miller/Schroeder loan agreement

Mark--As I explained to Paula by phone just now, I don't believe NIGC will be concerned by the security in both payments to the escrow account (mgmt fee and repayment amt). I think NIGC will be comforted by a "walk through" of the arrangement in a cover letter so that they know what to look for/expect.

-----Original Message-----
From: Rindels, Paula
Sent: Wednesday, January 20, 1999 2:39 PM
To: Karns, Christopher
Cc: Jarboe, Mark
Subject: RE: NIGC review of Miller/Schroeder loan agreement

During my long meeting/conference call this morning, I noticed the parts of your original e-mail below regarding M&S not having an interest in the management fee. The way this deal is currently structured they do have such an interest. Both the amounts paid as management fees and the amounts paid as loan repayment amounts secure the loan to the manager. See the draft Notice and Acknowledgment of Pledge which I've enclosed. Do we still have any chance with NIGC?

<< File: Notice&Acknowl of Assign-#4.wpd >>

-----Original Message-----
From: Karns, Christopher
Sent: Wednesday, January 20, 1999 8:30 AM
To: Rindels, Paula
Cc: 'Brenden, Mary Jo (e-mail)'
Subject: RE: NIGC review of Miller/Schroeder loan agreement
Importance: High

I'll work on the NYRWB letter this AM and forward a draft to you. And, yes, if you send the loan documents to me via e-mail, I can make sure that they get to NIGC for review. Chris

-----Original Message-----
From: Rindels, Paula
Sent: Wednesday, January 20, 1999 9:14 AM
To: Karns, Christopher
Cc: 'Brenden, Mary Jo (e-mail)'
Subject: RE: NIGC review of Miller/Schroeder loan agreement

Listened to your voicemail also. Please start putting the letter to the New York Racing and Wagering Board together. We're having a conference call on the financing today to go over draft loan documents and the due diligence list. After that call I should be able to put together a substantially final draft of the loan documents. I'll let you know. If I e-mail you the documents, could you have them delivered to NIGC for review?

I'll discuss these issues with the financing participants today. I know there was one document - a Notice and Acknowledgement of Pledge (with respect to the pledge of the management agreement revenues as security for the loan) that required the tribe's signature that we had already told the manager had to be submitted to NIGC for approval. I'll see where that's at and let you know.

Thanks for all your assistance!

-----Original Message-----
From: Karns, Christopher
Sent: Tuesday, January 19, 1999 4:25 PM
To: Rindels, Paula
Subject: NIGC review of Miller/Schroeder loan agreement
Importance: High

BKY Case Nos.
02-40284 to 02-40286
Exhibit H

The following comes from the draft memorandum I'm putting together regarding my review/research. Because of the fast-approaching close date, I wanted to get this info to you:

The National Indian Gaming Commission (NIGC) regulates gaming activities in Indian country pursuant to the terms of the Indian Gaming Regulatory Act. Under § 12 of IGRA (25 U.S.C. § 2711), all management contracts must be submitted to the NIGC Chairman for review and approval. NIGC's implementing regulations indicate that:

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Christopher A. Karns
Dorsey & Whitney LLP
Washington, DC
202/452-6983
202/452-6989fax

Karns, Christopher

From: Boylan, Virginia
Sent: Friday, January 29, 1999 4:18 PM
To: Rindels, Paula; Karns, Christopher
Cc: Jarboe, Mark; Townsend, Jim
Subject: RE: M&S NIGC matter

This is a very tough issue - however, I would think we have done enough of these to know what NIGC is looking for (and there are "instructions" from them on this issue) --- if there a question, then of course we must wait. However, if it is very similar to others that have been deemed by NIGC to be non-mgmt contracts, then we would probably be okay. It is just so frustrating to be jerked around by folks whose only role in life is using their bureaucratic power over others.

-----Original Message-----
From: Rindels, Paula
Sent: Friday, January 29, 1999 2:45 PM
To: Karns, Christopher; Boylan, Virginia
Cc: Jarboe, Mark; Townsend, Jim
Subject: RE: M&S NIGC matter

If what Chris wrote on 1/19 is true, i.e. -

The National Indian Gaming Commission (NIGC) regulates gaming activities in Indian country pursuant to the terms of the Indian Gaming Regulatory Act. Under § 12 of IGRA (25 U.S.C. § 2711), all management contracts must be submitted to the NIGC Chairman for review and approval. NIGC's implementing regulations indicate that:

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Then why would the NIGC not having reviewed the documents not hold up the deal? How can our client be protected? Is there are chance that, if for some unforeseen reason the NIGC later says our loan documents do give M&S a financial interest in the management agreement, either or both of the management agreement and the loan documents would be void? Or is that not what that sentence in the regs says?

-----Original Message-----
From: Karns, Christopher
Sent: Wednesday, January 27, 1999 3:11 PM
To: Rindels, Paula; Jarboe, Mark
Cc: Boylan, Virginia
Subject: M&S NIGC matter
Importance: High

Paula/Mark--

Recall we sent NIGC a letter and drafts of the loan documents so that they would be comfortable with the fact that M&S's interest in the agreement is NOT management of the casino, per Fred Stuckwisch's (NIGC) request. I explained to Fred the nature of the deal and our approaching anticipated close date and he indicated that a quick turn around was possible.

BKY Case Nos.
02-40284 to 02-40286
Exhibit I

Well, I called NIGC to find out the status of their review and to answer any questions which may have arisen. I eventually spoke with Elaine Trimbell, who told me that she had not looked at the documents yet, and that an NIGC attorney wouldn't be assigned to review them until she had finished her initial cut. She also said that it would take approximately 30-60 days for NIGC to finish its review, that they operate on a "first in, first out" basis, there were several others in front of ours, and there was no way to move it up. When I reminded her of our timeline and my discussion with Fred, she said."there is no way we can turn it around that fast". So much for providing them with a courtesy copy.....

Anyhow, I spoke with Ginny and she indicated that she did not believe that NIGC's refusal to do a quick turnaround should not hold up the deal. (Ginny, if I mischaracterized what you said, please clarify). FYI.

Christopher A. Kams
Dorsey & Whitney LLP
Washington, DC
202/452-6983
202/452-6989fax

Karns, Christopher

From: Boylan, Virginia
Sent: Friday, January 29, 1999 4:18 PM
To: Rindels, Paula; Karns, Christopher
Cc: Jarboe, Mark; Townsend, Jim
Subject: RE: M&S NIGC matter

This is a very tough issue - however, I would think we have done enough of these to know what NIGC is looking for (and there are "instructions" from them on this issue) --- if there a question, then of course we must wait. However, if it is very similar to others that have been deemed by NIGC to be non-mgmt contracts, then we would probably be okay. It is just so frustrating to be jerked around by folks whose only role in life is using their bureaucratic power over others.

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Sent: Friday, January 29, 1999 2:45 PM
To: Karns, Christopher; Boylan, Virginia
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Then why would the NIGC not having reviewed the documents not hold up the deal? How can our client be protected? Is there are chance that, if for some unforeseen reason the NIGC later says our loan documents do give M&S a financial interest in the management agreement, either or both of the management agreement and the loan documents would be void? Or is that not what that sentence in the regs says?

-----Original Message-----
From: Karns, Christopher
Sent: Wednesday, January 27, 1999 3:11 PM
To: Rindels, Paula; Jarboe, Mark
Cc: Boylan, Virginia
Subject: M&S NIGC matter
Importance: High

Paula/Mark--

Recall we sent NIGC a letter and drafts of the loan documents so that they would be comfortable with the fact that M&S's interest in the agreement is NOT management of the casino, per Fred Stuckwisch's (NIGC) request. I explained to Fred the nature of the deal and our approaching anticipated close date and he indicated that a quick turn around was possible.

BKY Case Nos.
02-40284 to 02-40286
Exhibit J

Subject: RE: St. Regis
Date: Wed, 24 Feb 1999 14:43:27 -0600
From: "Rindels, Paula" <Rindels.Paula@dorseylaw.com>
To: "Karns, Christopher" <Karns.Christopher@dorseylaw.com>
CC: "'Brenden, Mary Jo (e-mail)'" <m&s-legal@telepool.com>

I don't think we are particularly concerned at this point - since we've now funded the loans! - with how long it takes. And we would agree that the amendment to the management agreement is first priority - no problem there.

Mary Jo, please send me up an executed copy (not the original) of the notice of pledge. I'll also note for Elaine the minimal changes that have been made when I fax it to her. Thanks.

> *-----Original Message-----*
> *From: Karns, Christopher*
> *Sent: Wednesday, February 24, 1999 2:39 PM*
> *To: Rindels, Paula; Jarboe, Mark*
> *Subject: FW: St. Regis*
>
> *Paula--*
>
> *I finally spoke with Elaine Trimble at NIGC. She said that the documents are still under review, but that it will likely take a little bit longer than originally anticipated to conduct their review because the Tribe needs to have the amendment to raise the ceiling up above $20M and has asked that the amendment be processed prior to the loan documents being approved. (In other words, perhaps we had the cart before the horse, from NIGC's perspective).*
>
> *I can't imagine why raising the ceiling would take alot of time. It would appear to take minimal time to do. Nevertheless, the skeletal staff at NIGC are focused on the amendment right now, not the loan documents. (In all honesty, I think this becomes an excuse for them to get to the loan documents at their leisure.....but maybe I'm overly critical).*
>
> *She does want to see the executed Notice of Pledge. Please fax it to her at 202-632-7066.*
>
> *I'm still waiting to her from Mr. Williams....*
>
> *-----Original Message-----*
> *From: Karns, Christopher*
> *Sent: Wednesday, February 24, 1999 2:30 PM*
> *To: Rindels, Paula*
> *Cc: Jarboe, Mark*
> *Subject: RE: St. Regis*
>
> *I put calls in to Robert Williams at NYSRWB and Elaine Trimbel at NIGC. I have yet to hear back from either of them.....fyi.*
>
> *-----Original Message-----*
> *From: Rindels, Paula*
> *Sent: Wednesday, February 24, 1999 10:03 AM*
> *To: Karns, Christopher*
> *Cc: Jarboe, Mark*
> *Subject: St. Regis*
>
> *A couple of updates:*

CONFIDENTIAL
MS 112263

PRIV 500025

BKY Case Nos.
02-40284 to 02-40286
Exhibit K

> 1. Miller & Schroeder is going to proceed to register as a "principal" of the management company, but post-closing. In a call we had with Rob Williams yesterday he assured us that this would not affect the validity of the temporary registration already obtained by the management company. Could you please call Rob Williams and start the process of getting the application forms and information sent to Miller & Schroeder? The contact person there will be Karen at 612-376-1550. She is Mary Jo Brenden's assistant. They have gone through the process before in several other states.
>
> 2. I assume that our request for NIGC review of the Notice of Pledge and other loan documents has not been withdrawn and is still proceeding. We do want it to proceed, especially for the Notice of Pledge. Could you find out whether they want us to submit the executed Notice of Pledge in connection with their review? If so I can send you a copy today. There have been several changes from the version originally submitted and I will highlight those changes as well.
>
> It looks like the loans will probably be funded today. Thanks for your help.

MEMORANDUM

TO: Paula Rindels
Brian Palmer

FROM: John C. Thomas

RE: Bremer Business Finance/Miller & Schroeder Investments Corp.
File No.: 189243-141

DATE: December 8, 2000

I met yesterday with our client, Miller & Schroeder Investments Corp., at the request of Bremer Business Finance and their counsel, Bob Weinstine of Winthrop & Weinstine. The purpose of the meeting as called by Winthrop & Weinstein was to indicate to Miller & Schroeder that Bremer expected a recission and repurchase of the $2 million participation that they hold in the subordinated loan to President R.C. On cursory review of the draft Complaint that he presented for discussion the basis is for fraud and misrepresentation claims. They indicate that the offering information, prepared by Miller & Schroeder, contains language in the section entitled "Salient Details" which I have attached and highlighted, that indicated that NIGC approval was necessary for the Pledge by the Tribe to send all pledged revenues to the escrow agent. I also understand that Dorsey & Whitney subsequently determined and informed Miller & Schroeder that the Consent of the NIGC was not necessary inasmuch as this was a loan, not to the St. Regis Mohawk Tribe but rather directly to President R.C., a non-Indian Borrower I think the fallacy in Weinstein's argument is that the reason for their participation not being repaid has nothing to do with the Pledge but rather the operations of the casino. I also understand but have not confirmed that when the determination was made to proceed with the closing without the consent of the NIGC to the Pledge that letters were sent to all of the prospective participants. Miller & Schroeder is trying to verify whether or not the particular notice that the closing was going to proceed without the Pledge was sent to Bremer. I suspect that was probably the one participant that didn't get a copy.

The second claim that they make is that final approval of the amended $28 million loan was not approved by the NIGC. This allegation belies the fact that $20 million was in fact approved and so long as that was approved the $12 million in loans advanced by Miller & Schroeder and sold to the participants would be repaid from the Pledged Revenues. It's irrelevant to the Loan Participants that the last $8 million wasn't approved.

BKY Case Nos.
02-40284 ti 02-40286
Exhibit L

Weinstein has demanded that we respond to this "draft" Complaint by Friday or else he would file it and notify the other 28 participants of Bremer's position. Paula, I would appreciate your confirmation of the facts as I understand them and I will send a copy of my response up for your and Brian's review. By copy of this to Tom and Bill, note that although not named as a defendant, a number of allegations are made by Bremer that Dorsey & Whitney was negligent in the preparation of the documents, not obtaining NIGC approval for the Amendment and "as experts in Indian gaming, Miller & Schroeder and the law firm knew that it was critically important to obtain NIGC approval of the Pledge Agreement". I suspect that our mention in the draft Complaint is for the purpose of trying to disqualify us as counsel to Miller & Schroeder if this proceeds to litigation. I would ask that Bill review this to determine whether or not we are disqualified from the representation merely because Paula may be a fact witness. My general understanding is that that does not per se disqualify us. Oppenheimer Wolff & Donnelly is lobbying Miller & Schroeder to represent them on this issue but I would obviously prefer to keep all of this within the firm to the extent we can.

Please call me if you have any questions.

JCT/ckl
Enclosures

cc: Tom Tinkham (w/encl.)
Bill Wernz (w/encl.)
Mark Jarboe (w/encl.)